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Sup Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 610

GEORGE COUPER GIBBS, INDIVIDUALLY AND AS
ATTORNEY GENERAL OF THE STATE OF FLOR-
IDA, ET AL., APPELLANTS,

vs.

GENE BUCK, INDIVIDUALLY AND AS PRESIDENT
OF THE AMERICAN SOCIETY OF COMPOSERS,
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FILED DECEMBER 6, 1940.

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Now, may it please the Court, the mode of operation of ASCAP, as shown by the evidence in this case, comes within the scope of that definition by the Court. Here is ASCAP which is not the original copyright holder; it is a Society of copyright holders, but it is dominated and controlled by a board of twenty-five directors who use these composers for what? Not for the exploitation of the individual copyrighted composition, but for the development of an entirely different kind of business, and for the exploitation of the business of ASCAP. That is something that was never contemplated by the Constitution or the Copyright Act, and they derive vast sums of revenue in the exploitation of a business which does not come within the scope of the Copyright Act.

Judge Hutchinson: I was arguing from the standpoint of the individual composer all of the time.

Mr. Ellis: Perhaps, I should have thought of that sooner. [fol. 1046] Judge Hutchinson: I said there might be a difference with respect to ASCAP or the combination. I said why should the individual be subjected to these discriminations. I think they have got no business being put under this law. I was talking about the individual. I thought the individual composer might have a better complaint against your Act than the combination.

Mr. Ellis: I submit that it would be applicable to the individual—the right does not extend to the exploitation of a property not embraced within the scope of the right. If an individual collected compensation first upon the use of his composition, say, five hundred dollars from Station WIOD and also two per cent in addition from the proceeds of the station from advertising on account of the performance of six other musical composition to which copyrights were held by other persons——

Judge Hutchinson: That isn't the way the contracts were made.

Mr. Ellis: That's what the Statute complains of. He is getting money for the use of another copyrighted article which really should go to another copyright holder, and every dollar he gets on that is at the expense of another copyright holder.

I didn't intend to take nearly so much time, your Honor, [fol. 1047] but before finishing I would mention the case of the United States v. Allen. In this case appellants were

required to make certain reports and to pay a fee, this is a Kansas Case, and the Court held that was not unreasonable. These requirements are substantially the same. Mr. Boggs has been into the law on this matter and with the Court's permission I will leave the balance of my time to Mr. Boggs.

Judge Hutchinson: All right.

ARGUMENT TO THE COURT

By Mr. Boggs:

May it please the Court, I shall be very, very brief, indeed, but I do want to add one last word to what Mr. Ellis has said, and which I hope, will clear up your Honor's mind entirely about Section 4-C—the one in which there is a prohibition against collecting on programs which are not supplied by the persons licensing the music. I say that regardless of whether it is a combination or persons, whether it is ASCAP or an individual, it is entirely a reasonable requirement from this very one angle. The effect of such contracts as this that take a percentage of the gross business of a radio station for supplying a limited quantity of music to that station—the effect of that is obvious to all; the effect is to change the character of the programs that are given out by that station, for having bought it over a period of years by paying a percentage on their gross business, it seems to me, the inevitable effect on that station is to alter the character of his programs, and deprive [fol. 1048] the public of other programs, not only to his own benefit, but to the benefit of the public. It tends to lessen musical competition in that radio station, and that is just as true whether the people dealing with that radio station is an individual or whether it is a combination such as ASCAP or SESAC.

With reference to that list, I am entirely satisfied with the citation furnished by my colleague, and I think it will answer every doubt which your Honors might have about it—that is, in reference to Section 2-A. A statement was made by your Honor that the authors and composers would be hamstrung by the Statute. I think your Honor then had reference to Section 2-A of the 1939 Act. If your Honor considers it a harsh and burdensome requirement, it will not fall upon the authors and composers, and the persons

least fitted for such a requirement, but as the record in this case discloses the practice of this business is that the authors and composers do not own the musical copyrights. The publishers own them, and I can't think it is much of a hardship on a business man to make the kind of a record made by Mr. Richardson.

Mr. Frohlich complains about the 1939 Statute because he says it makes no provision for the payment of the persons. I say it isn't necessary for this Act to make provisions for payment. Section 8 says:

"It shall be unlawful for any person, without the consent of the owner thereof, if said owner shall have complied with the provisions of this Act, publicly to perform [fol. 1049] for profit, in this state, any such composition, or for any person knowingly to participate in the public performance for profit of such composition."

So Florida does protect them. There is nothing in Mr. Frohlich's point there at all.

With reference to the monopoly provisions, I would point out in that connection the case of *Strauss v. American Publishers* in which the Court declared that a right existing by virtue of a Federal grant does not permit them to engage in restraint of trade.

Turning back to the 1937 Act, I again call the Court's attention to Sections 2-A, 2-B, and 6 of the 1937 Act. The ones Mr. Frohlich said were the worst things in the whole Act. In our view they are entirely out of this case because of the appeal and by virtue of Section 15 of the 1939 Act. Sections 2-A, 2-B, and 6 will be found to lay no duties whatever on the enforcement officers of this State.

As far as saying that these Statutes are aimed at ASCAP, I can't personally give any support to that view at all, because they are so built as to fit perfectly well SESAC or any organization. It must also be borne in mind that all contracts expire at the end of this year, and nobody has a right to forecast what will happen to all that money; I, for one, can't see that the State of Florida has picked out [fol. 1050] ASCAP and made an act for it.

Judge Hutchinson: Take Section 3 of the first Act which makes it invalid—how do you avoid the Constitution?

Mr. Boggs: Your Honor, that is amply answered by authorities which are cited in the written brief that I have

here, and it arises out of the power—the inherent power which the Sovereign State possesses in the nature of police power, and the things which are necessary for the protection and safety and welfare of the people, which are always found in that category; with reference to the sale of liquor it has been repeatedly held not to offend against the abrogation of contracts—

Judge Hutchinson: That is just an incident in the operation of the Act. Here is a clause under which the Legislature takes directly—the only way to possibly sustain that would be to show the thing invalid at the time the contract was made—that a man could not have rights under that.

Mr. Boggs: That section is related to the monopoly section.

Judge Hutchinson: This monopoly section wasn't in existence when the contract was made, and the contract was then valid, and the State cannot impair the obligations of a contract—unless the contract is in reference to the special matter no vested rights can be obtained.

Mr. Boggs: It is my contention, and you will find ample [fol. 1051] support for it, monopoly is something that has been abhorred at common law, and it doesn't carry—

Judge Hutchinson: If this was a monopoly and forbidden of common law, the Statute wouldn't defeat the contracts because they are already defeated, but if you conclude that these were in restraint of trade—not in restraint but in violation of the law, how can you sustain Section 3 which is directly in the face of the Constitution. Ordinarily, the State can't pass a law impairing the obligations under contract.

Mr. Boggs: We will suppose that some sort of a mild regulation of a business was contemplated, but that doesn't strike at any fundamental pre-existing principles recognized at common law. In a case of that kind the constitution provision takes complete charge and an attempt to discharge that is void.

Judge Hutchinson: How can this be accepted out of that principle?

Mr. Boggs: Because some Chancellor back in England said in common law, monopoly is a thing to be abhorred.

Judge Hutchinson: All right, now, what about these other sections that nobody has talked about? They don't amount to anything?

Mr. Boggs: In the old Act?

Judge Hutchinson: In the first Act that run along with the main Act.

[fol. 1052] Mr. Boggs: If Section 1 of that Act isn't good, the rest of the Act tumbles, if Section 1 is——

Judge Hutchinson: There is no question of these others?

Mr. Boggs: There was some complaint made of the administrative provisions of the Act, although, it wasn't argued by Mr. Frohlich this afternoon. They said that the penalties were too excessive, and our answer to that is they didn't fall under the grade of cruel——

Judge Hutchinson: If it is invalid, the penalties don't matter.

Mr. Boggs: Then, there was some complaint about Sections 11-A and 11-B. They said it was wrong—it will be assumed, however, that the Courts of Florida will not do wrong about that. If those things deny them due process, the Courts of Florida won't do it.

Judge Hutchinson: In Section 4-A you have a prohibition against these copyright owners—I don't believe they could do it. However, they haven't tried to do it.

Mr. Boggs: No, sir. I think it was in the Segrain distilling case that the Supreme Court decided that as a state had the power to regulate monopoly, it has also the power to lessen—to give back some of the things which it might have taken away.

Judge Hutchinson: I believe I understand your contention, but I don't know whether I know how to handle it.

[fol. 1053] Mr. Boggs: Thank you, your Honor.

ARGUMENT TO THE COURT

By Mr. Wideman:

Perhaps, may it please the Court, we should say that in the Nebraska Case that this question of inseparability came up rather acutely. The State endeavored to get the Court to regard those provisions wholly as inseparable, which the Court declined to do. It was a vital point in the case, particularly, on motion for a new trial, and I thought we might advise the Court on this matter, particularly, in view of the fact that the Court has discussed several different parts of the Statute as standing on their own feet.

Some mention was made by Mr. Ellis that ASCAP is here using the property rights of others to exploit some other organization, which he saw fit, I believe, to compare with another organization. We simply direct the Court's attention to the fact that ASCAP is a non-profit making association, under the laws of New York, and it has been testified to here that all of its income in excess of seventeen per cent for overhead goes to the individual writers and accomplishes the purpose for which the copyright law was enacted.

Now, there is one other point that may be worth calling to the Court's attention. We have talked so much about affirmative copyrights—I suppose it will not be disputed [fol. 1054] that this property right is like any other property right. A man who owns it has the right to sell it, to say to whom he will sell it, and, as a rule, to say where he will sell it, and, in fact, I think, it has been recognized in reference to copyrights that the right to withhold is just as serious as the right to sell. This new law, as we see it, tells the copyright owners that they may not have that right of withholding, and unless he takes an affirmative act when coming into Florida, and complying with very drastic provisions of the law, his property would be the property of anyones in Florida who wants to hop on it. We think that alone, taken by itself, is a striking illustration of the invalidity of this law.

You- Honor has indicated very strongly that you have in mind regarding these laws as covering two classifications of people—the individuals which you think may apply to them in a different manner than it might be applied to combinations.

Judge Hutchinson: They have called that Kansas Case to my attention. It seems to give the State more authority than they would have with common property.

Mr. Wideman: I am not familiar with the Kansas Case, your Honor, and we will remember to look it up and comment in our brief on that point. I hope your Honor's recollection is wrong.

However, your Honor seemingly is troubled and concerned and wants to be enlightened on the question of whether or not these laws may be held to be unconstitutional [fol. 1055] as applied to individuals and constitutional as applied to combinations. This seems to be the one thing that is troubling your Honor. Now, I don't know whether my thought on that subject is worth anything or not, but

we must, it seems to me, take into consideration the inherent nature of these copyrights. I don't think there is a similar situation in regard to any other industry, at least, I have never been able to find a comparison. If these people have any property they are certainly entitled to the rights and value of that property, and we respectfully contend that we have demonstrated in the testimony, particularly in the depositions, rather than the testimony taken here yesterday and today—that the only way this property can be marketed is through the cooperative effort of the owners of the copyrights. And individual copyright owner standing alone is helpless. That has been the experience—that is not theory.

Several years after 1914 when ASCAP was organized, and as Irving Berlin testified, they were discouraged for a long time, and it was not until 1921 and 1922 that they were able to get the first public performance for profit. Prior to that time not a dime, so far as the records disclose, had ever been paid to a copyright owner. I think we have got to take into consideration the unique nature of the subject matter, and for your Honor to say you are inclined to hold this law unconstitutional as applied to individuals, but it may be constitutional as applied to a combination of individuals—

Judge Hutchinson: You understand, of course, that that [fol. 1056] was merely suggestive.

Mr. Wideman: I understand. But for your Honor to say that means absolutely nothing to the copyright owners realizing the value of their property, and unless this law is declared to be unconstitutional with regard to two or more people our effort here is gone. It doesn't do us a bit of good.

Judge Hutchinson: The right of associations like ASCAP and SESAC to exist is really at stake?

Mr. Wideman: That's right. When you go to talking about combinations and monopoly, I have always understood that State laws and Federal laws had reference to the curbing of some evil, restraint in trade—holding down the freedom of commerce. That is the justification for any law of that nature. But what is the evil here? Where is any holding up of prices demonstrated in this case? Where is there any restraint in trade, or restraint in competition? That is another unique thing about this music business. It is a commodity that is not subject to competition. It not only can be marketed in one way, but it is the only commodity that I know of that is not subject to competition. A broadcaster

wants to put on a program, for example. It may be serious music, standard music, or jazz music, but they want to put on that particular music. Now, what good is it going to do the broadcaster if he wants to play "Alexander's Ragtime Band" and Irving Berlin tells him he can play it for twenty-[fol. 1057] five dollars and Von Tilzer comes along and says, "I will sell you, 'Waltz Me Around Again, Willie', for twenty dollars"? It is silly. It simply is not there, and in those respects this sale of copyrighted music is unique. This has got to be recognized in order to preserve it. It seems to me that all of those things have got to be considered on this question of the combination. Where is the evil? What is the evil to be eliminated? I don't know what it is, and I haven't heard suggested what it is. As a justification for the exercise of the police power, haven't we got to have something to curb for the public good? The people we have done business with are satisfied.

With just those thoughts and conclusions we want to thank the Court for its patience and generosity in giving us an opportunity to establish our case. There is so much that can be said about this thing and we feel that only a very, very small part of the ground has been covered, but we think the material part of it has been covered by these twelve depositions and the testimony to which the Court listened yesterday and today.

Judge Hutchinson: The Court will recess until further notice.

[fol. 1058] (Depositions and testimony taken in the case of Gene Buck, et al., vs. Harry R. Swanson, et al., to be used in this case by stipulation of the parties in open Court.)

SIGMUND SPAETH, called as a witness on behalf of the plaintiffs, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

Q. Doctor Spaeth, what is your full name and address?

A. Sigmund Spaeth; business address, 220 West 42nd Street, New York; home address, Westport, Connecticut.

Q. What is your occupation?

A. I have the title of "tune detective" on the radio. In a way, that describes my activities. I have used the researches, studies and analyses of music that I have made all my life for entertainment through broadcasts, through lectures, through other forms of educational entertainment, through motion pictures. I have written over a dozen books popularizing music. I have written a number of magazine articles. I have taught music, especially in the University of Hawai'i, Honolulu. In fact, my activities all having to do with music, the analysis of music, the popularization of music, and to a certain extent I have composed music and written words for music.

Q. Can you give us the names of the books you have [fol. 1059] written?

A. Well, the best known book is perhaps "The Art of Enjoying Music". That is used as a text book in over fifty schools and colleges. My book, "Behind the World's Best Music," that is used by commentators on the radio. I have written, "Great Symphonies, How to Remember and Recognize Them," in which I set words to the best symphonies. I also wrote a book called "The Common Sense of Music," which was the first attempt to make music intelligible to the layman.

Q. When was that written?

A. 1924.

Q. Are you a member of the American Society of Composers, Authors and Publishers?

A. Yes.

Q. When did you become a member of that Society, about?

A. So far as I remember the date, it was about 1922; it was before 1930. I haven't my contract; they would have a record of the exact date. I would say 1922 or earlier.

Q. Had you prior to your joining the Society written musical compositions or words of musical compositions?

A. Yes, I had done that sort of thing during almost my entire life, certainly since I am in New York, which is 1912, and before that in college, and while teaching at Princeton University; I have always been fairly active in the creation, arrangement and adaptation of music of all sorts.

[fol. 1060] Q. Can you give us the names of some of the pieces you have written?

A. Yes. My membership in ASCAP is based chiefly on my lyrics. As a writer of words I have written words of the

song, "Down South," which has been very popular and had, I believe, a number of performances on the air. It was recorded in 1906. I wrote the words for a song by Franz Lehar called "My Little Nest;" the full name is "My Little Nest of Heavenly Blue." That was performed on the air.

I wrote the words for a song called "Chansonette," with music by Rudolf Friml. That song had considerable popularity and appeared recently as "The Donkey's Serenade," although my lyrics do not appear there.

There was a song called "The Madrigal of May," a song used by John Barrymore in his production of "The Jest", for which I wrote the words.

I have written various other lyrics, and among my compositions is a setting of humorous poems, "Jabberwocky," a nonsense poem, which I set to music, published by Schirmer. I have published several other choral numbers, chiefly for male voices.

Q. Had you written any of those pieces you have just mentioned, prior to 1914, or prior to 1922 when you joined the Society?

[fol. 1061] A. None of those which I have just mentioned, no, but I had written—yes, some of them had been published before I joined the Society. I had written the lyrics which I spoke of, they had been written before the time. I had written various college songs, some of which have since been published. One song appears now in the Haverford College Song Book, called "Haverford Harmony." I used a similar tune in a "Song of Kiwanis." I was National Chairman of Music for two years. That is an organization similar to Rotary. I was editor of the Kiwanis Song Book.

Q. Are you a citizen of the United States?

A. Yes, by birth.

Q. By birth?

A. Yes, born in Philadelphia, Pennsylvania.

Q. Prior to the time that you became a member of the Society, had you ever received any compensation for the performance rights in any of the works that you had written or composed?

A. No, none whatever.

Q. When for the first time did you receive any compensation for your performance rights?

A. At the end of the first year, or at the end of the first quarter I got the membership in ASCAP.

Q. So far as you remember that was about 1922?

[fol. 1062] A. Yes. It might have been a year earlier. It was shortly after I joined the staff of the American Piano Company, which was in 1920, because I know that one of the songs which made my membership possible was "Chansonette".

Q. Prior to the time you joined the Society had you ever made any effort to ascertain whether any of the works written by you had been publicly performed for profit?

A. I had no way of checking up. I simply assumed that it would be a hopeless task, and I never made any definite effort to get any return from those works. Of course, the works that were published finally—when I say finally, I mean works of the more commercial type than the ones I had written at college—when those were published, I received royalties on sheet music; but I received no returns until I joined ASCAP.

Q. Did you receive royalties on mechanical reproductions of your compositions?

A. Yes.

Q. From whom did you receive those?

A. Mostly from the firm of E. B. Marks Music Company. They published most of my works. Some came from Schirmer and some from Boston Music Company.

Q. Have the copyrights on any of your works been renewed?

[fol. 1063] A. No; they were most of them written within twenty years.

Q. When these works come up for renewal will they be renewed by you in your name, if you are alive?

A. I presume so.

Q. Have these works a value for renewal purposes?

A. Yes.

Q. Are you in a position to demand advance royalties for the renewal of your works at that time?

A. That depends on the value of those works in the eyes of their publishers. I would be inclined to try to get an advance royalty if I could.

Q. Taking all the works you have written and composed over the years; assuming they are to be renewed some day after the 28 years original copyright had expired, would you say that these renewals have a substantial value to you?

A. Yes.

Q. Can you state for the record what you think they are worth?

A. That is hard to say. Two or three of the songs for which I wrote the words have had a very heavy sale. They have become standard. Take "Down South", it was the theme song of the "Show Boat". It is constantly on the air. It is very popular. I think that song will be very [fol. 1064] popular because the tune goes back to 1890. I was asked to write a modern lyric around 1920 to bring it back to popularity; and that occurred, because that song was very popular; therefore I have drawn sheet music royalties on that lyric and I expect that copyright to be renewed and to continue to draw on it.

Similarly, the song of Franz Lehar, a great composer; that song has great value. It was played as a violin solo by Kreisler. Those two numbers have a great value. In addition to which I have several collections of old songs, the best one of which is "Read 'Em and Weep," "The Songs You Forgot to Remember." Those collections are used as text books, and they have been used as material on the radio. Many of those songs are available only in my books.

I expect to keep those copyrights under my control permanently.

Q. What would you say was the value of a song like "Chansonette", to you?

A. That is not a good example; because "Chansonette" as a song has practically ended its life through being turned into "Donkey's Serenade". I only wrote the words. I have no interest in the present words, although the motion picture company paid me something for the right to use the [fol. 1065] song. Therefore, eliminate that lyric. But "Down South" had a very definite value.

Q. What value would you say it had for renewal?

A. If I were asking for an advance of royalty on that I would ask for perhaps \$500. It is pretty hard to judge those things.

Q. What would you expect to take in by way of royalty during the additional twenty-eight year period of that renewal?

A. That would be very difficult to say. The actual sheet music royalties, records and mechanical reproductions on a song don't approach the real value of the performing rights. The performing rights of a song like that are very much more valuable to me.

Q. What would you say would be the value to you for the renewal period?

A. It would be very difficult for me to say.

Q. Can you give me some estimate?

A. I would say perhaps two thousand dollars, maybe more.

Q. What would be the value of the Franz Lehar work?

A. I would say the same.

Q. "The Madrigal of May," what would be the value of that for the renewal period, for performing rights and everything else?

[fol. 1066] A. That would be perhaps somewhat less, because it has never been performed.

Q. What would be the value of the "Jabberwocky"?

A. That would be impossible to estimate. It is a setting for male chorus. Its performing rights and other rights would be perhaps as much as the other. I am not inclined to be overoptimistic of these things. I am judging from the returns I have had in the past. I am not, of course, a song writer in the sense that Irving Berlin is, but I have had my returns. My returns through ASCAP have always been in excess of my returns from publishing.

Q. When you wrote your songs as a rule you entered into a contract with publishers?

A. Yes.

Q. Under that contract does the publisher agree to pay you royalties?

A. Yes.

Q. On the sale of the sheet music?

A. Yes.

Q. And on mechanical reproductions?

A. Yes.

Q. There are provisions in your contract for performing rights, are there?

A. None whatever.

[fol. 1067] Q. Now, did ever any user of that music, any hotel or restaurant or any night club or motion picture company or any motion picture exhibitor or any radio station, apply to you for the right to have a license to publicly perform for profit any of the musical compositions that you published prior to your joining up with the Society?

A. No. I think that my works were used fairly often without any permission; but radio was in its very early days then so radio wouldn't have been interested.

Q. Have you a wide knowledge of the music profession?

A. Yes.

Q. Are you familiar with the people in it?

A. Yes.

Q. You know something of the customs and usages of the business?

A. Yes.

Mr. Nye: What are we going to do about objections? I want the record to show that the parties stipulate that either side may make such objections to the testimony as they wish at the time it is read in evidence.

(Discussion off the record.)

Mr. Nye: I want to object as to the materiality of all of [fol. 1068] the questions and also object to all questions and answers pertaining to the value of renewal of copyrights as highly speculative, for the reason there is no foundation for the opinion of the witness on this point.

Q. Now, Dr. Spaeth, can you tell us what you received by way of royalties from the American Society of Composers, Authors and Publishers for each year that you were a member of that Society since 1922?

A. My first classification, which I assume was a rather low one, paid me annually royalties of \$80, and I paid \$10 a year out of that, so that my net return for a good many years, for more years than I want to think back on, but it was several years before I got out of that \$80 class. That has gradually been raised, and then I received the princely sum of \$400 a year.

Q. What did you get by way of royalties per year from "Chansonette,- from the sale of sheet music?

A. Those royalties were never very large; I can't tell the exact amount, but comparatively small amounts.

Q. What would you call a comparatively small amount?

A. Perhaps from twenty to forty dollars a year.

Q. What did you get from "The Madrigal of May"?

A. Even less.

Q. "Jabberwocky"?

[fol. 1069] A. Less than fifteen dollars a year from both those.

Q. What did you get from your collection of choral works?

A. Those chorals, they have all run about the same thing. My sheet music royalties, the aggregate has never been very large. The entire total would represent perhaps a few hundred dollars a year, say; certainly not enough to live on. My best return was from "Down South."

Q. What did you get from that?

A. Pretty close to a hundred dollars a year.

Q. For how many years?

A. Ever since about 1920.

Q. What would be the total of your royalties from sheet music each year?

A. I don't think that any year I have drawn sheet music royalties of over \$300, or perhaps \$400 a year.

Q. Would that be an average?

A. The average would be no more than \$300, perhaps \$250.

Q. What would you say would be an average? Strike an average if you can.

A. \$250. a year.

Q. Do you get anything for mechanical rights on any of your compositions?

A. I included my mechanical rights in that. My royal-[fol. 1070] ties statements from my publishers since 1920 have not averaged more than \$250 a year, including mechanicals. My share of the mechanicals is 33 and one-third per cent.

Q. Did you get as much as \$250 each year for the period that you have been publishing music?

A. No. My most recent royalty statement, which is the one which is freshest in my memory, was a little more than \$50; that was from Marks; Marks has most of my publications; I have very little from anybody except Marks; so that by this last statement of fifty some odd dollars I feel that \$250 average during the year is fairly liberal. There have been years where it ran more than that, \$300 to \$400.

Q. Has there been any diminution of the returns to the writers from the sales of sheet music, if you know?

Mr. Nye: I object to that; no foundation for the witness's knowledge.

A. I would speak from my own experience, so far as I am concerned.

Q. This is not an answer. Are you acquainted with song writers?

A. Yes, with a good many of them.

Q. Do you also know publishers?

A. Yes.

[fol. 1071] Q. Do you know Irving Berlin, Inc.?

A. Yes.

Q. Do you know the members of Carl Fischer, Inc.?

A. Yes.

Q. And G. Schirmer, Inc.?

A. Yes.

Q. E. B. Marks?

A. Yes.

Q. Harms?

A. Yes.

Q. Do you know any other publishers?

A. Yes, I know J. Fischer & Brother; the Boston Music Company; Shapiro, Bernstein & Co.; Feist; Robbins; I know executives and others in all of those firms.

Q. Do you know of your own knowledge whether there has been a diminution of royalties received by these publishers from the sale of sheet music since 1922?

Mr. Nye: I object to that as calling for a conclusion.

A. Yes, I do know. I do know that there has been a steady and very definite diminution.

Mr. Nye: I object to the answer, except the word, "Yes," as not responsive.

Q. Do you know what that has been due to?

[fol. 1072] Mr. Nye: I object to it for the reason it is immaterial, and also no foundation.

A. Yes.

Q. What has it been due to?

Mr. Nye: I object to it as speculative, no foundation.

A. It has been due to the gradual encroachment, first the phonograph and later the radio, which interfere very strongly with the sale of sheet music, by taking the place of sheet music in the home.

Q. Has that diminution been very substantial?

Mr. Nye: That is objected to as calling for a conclusion, speculative, no foundation.

A. Yes.

Q. Have you seen any diminution in the royalties that you received from your own compositions in the past sixteen years?

A. Yes.

Q. Has that diminution been marked, substantial?

A. Yes.

Mr. Nye: Give me an objection as to the materiality on all of that.

Q. Which of your songs in the last two or three years has been played on the radio to any extent?

[fol. 1073] A. "Down South."

Q. When was that played on the radio?

A. I couldn't give the last time, but I was told I received—

Mr. Nye: I object to that as not responsive.

Q. Finish your answer.

A. When I say I was told, I received a written record from my publisher of the figures for 1936, which is the last year on which complete figures are available, and the complete figures—

Mr. Nye: I object to that as not responsive and not the best evidence.

Mr. Frohlich: Let him finish his answer.

Mr. Nye: I withdraw that.

A. (continued) The figures given me by my publisher on "Down South" show it has been played on the air over five thousand times during 1936.

Q. How many copies of the sheet music were sold during 1936 of that song?

Mr. Nye: I object to that as immaterial.

A. I couldn't give you the exact figures; certainly not more than two thousand.

Mr. Nye: You mean two thousand pieces?

The Witness: Two thousand copies of sheet music, certainly not more, and probably less.

Mr. Nye: The one piece, "Down South," you are talking about?

The Witness: Yes.

Q. Did you find that the figures of performing over the radio had any effect at all upon the sale of sheet music of your composition?

Mr. Nye: Objected to as speculative, no foundation having been laid.

A. Yes; the figures prove it quite definitely.

Mr. Nye: I move to strike out the answer as a conclusion and not a statement of fact.

Q. Is the sale of sheet music stimulated or retarded by the broadcasting of the composition?

Mr. Nye: Same objection.

A. Definitely retarded.

Q. You said the figures have proved that. Have you some figures?

Mr. Nye: Objected to as immaterial.

A. My royalty statements have consistently shown a smaller sale of sheet music as compared with a larger distribution through radio. The biggest year in radio, 1936, was my smallest in sheet music royalties up to that time. It has been still smaller since that time.

[fol. 1075] Q. Now suppose, Doctor, that you were acting alone and independently of a substantial number of other composers or writers, would you be able to determine and fix the price to be charged for the use or rendition of your copyrighted musical compositions within the State of Nebraska?

Mr. Nye: I object to that as calling for the conclusion of the witness, no proper foundation laid, and speculative.

A. I would have no way of judging or fixing such price.

Q. If you were to fix the price of a composition for the public performance for profit, what would you have to take into consideration, in the State of Nebraska?

Mr. Nye: Objected to as calling for the conclusion of the witness, not the proper form of hypothetical question; no foundation.

A. I would be guided by the possible interference with my local sales of sheet music and mechanicals.

Q. What would you have to take into consideration, to fix the price for public performance for profit?

Mr. Nye: Same objection.

A. If I had to fix such a price I would be inclined to price it in accordance with the profit that I thought the user was making and I would try to charge him just as [fol. 1076] much as I could reasonably in accordance with his business.

Q. Would you have to take into consideration the nature of the use?

Mr. Nye: Same objection to all these questions.

A. Yes.

Q. Would you have to take into consideration the establishment at which the composition would be performed?

A. Yes.

Q. Would you have to take into consideration the size of the orchestra or the nature of the artist or singer who performed the composition?

A. Yes.

Q. Would you have to take into consideration the size of the establishment and the business that it does?

A. Yes.

Mr. Nye: I also object to all these questions as extremely leading.

Q. Tell me all of the factors that you would take into consideration if you were to fix and determine the price to be charged for the public performance for profit of one of your compositions?

A. I would take into consideration the profit likely to be made by the user, the size and importance of the establishment concerned, the elaborateness or simplicity of the production, the size of the potential audience, and lastly, the possible effect upon my own returns in other ways from that same territory.

Q. Would you have to do that, Doctor, with respect to each and every place in the State of Nebraska, which would use your composition for public performance for profit?

A. Yes.

Q. Are you in a position financially to make investigations in the State of Nebraska with respect to the establishments of the various users of music in that State?

A. No.

Q. Are you able to employ investigators within the State of Nebraska for the purpose of eliciting that information?

Mr. Nye: Objected to as immaterial and calling for the conclusion of the witness.

A. No.

Q. Are you in a position financially or otherwise to employ investigators for the purpose of detecting infringements of your compositions within the State of Nebraska?

Mr. Nye: Same objection.

A. No.

[fol. 1078] Q. Are you in a position financially or otherwise to engage lawyers to bring suits to protect you against infringements in the State of Nebraska?

Mr. Nye: Same objection.

A. No.

Q. Have you ever been in the State of Nebraska?

A. Yes.

Q. Have you ever heard any of your compositions played in the State of Nebraska?

A. I have played them myself.

Q. Have you heard others play them?

A. No, I can't say that I have, but I have numerous times played my compositions at the Ad-Sell Club in Omaha. I appeared at a night club there where they were doing one of my songs.

Q. Would you be able to fix a price to be charged for the public performance for profit, at the time your compositions are published?

Mr. Nye: Objected to as immaterial and speculative.

A. It would be impossible to fix it in general; it would have to be specially fixed for each performance.

Q. So that if you publish a composition, at the time the composition is published and sold in the State of Nebraska, [fol. 1079] would you have any way at that time to put on that composition the price to be charged for the public

performance for profit of that composition in the State of Nebraska?

A. No, I couldn't put such price on it.

Q. When you publish a piece, who does the publishing and selling, you or the publisher?

A. The publisher.

Q. Have you given any of your publishers at any time on any of the compositions that you have published, the right to fix a price for the public performance for profit of your compositions within the State of Nebraska?

Mr. Nye: I object to that as not the best evidence.

A. The answer is no.

Mr. Nye: Add to that an objection as to materiality.

Q. Have you ever received any royalties from any of your publishers on any of your compositions, for the public performance for profit of any of your compositions?

Mr. Nye: I object to that as immaterial.

A. I don't remember receiving any. The only royalties which would come under the head of mechanical. That is off the record.

[fol. 1080] Q. Do you wish to retain to yourself the right of public performance for profit in any of your musical compositions at the time that they will be renewed, when the original term of copyright expires?

Mr. Nye: That is objected to as immaterial, calling for a conclusion of the witness, and speculation.

A. I always expect to control the performing rights to my compositions either personally or through such an organization as ASCAP.

Q. Would you allow your publisher to fix the price for public performance for profit on any of your renewal copyrights?

Mr. Nye: Objected to as calling for a conclusion and speculative.

A. I would not allow that.

Q. Would it be to your advantage to control the price for the public performance for profit of any of your musical compositions at a future date?

Mr. Nye: I object to that as calling for a conclusion, speculation, and immaterial.

Q. Apart from the sale of sheet music?

Mr. Nye: Same objection.

A. Would it be to my advantage to control the price for [fol. 1081] public performance for profit?

Q. Yes.

A. It would be, but I can't conceive such a possibility.

Q. Supposing such a possibility and there were no Society and you were acting as an individual, would it be to your advantage to control in the future, apart from the sale of sheet music, the public performance for profit of your respective compositions?

Mr. Nye: Same objection, and also it is in improper form for a hypothetical question.

A. My answer would be, it would be profitable if possible, but I can't conceive of the possibility.

Mr. Nye: I move to strike out the answer, except the words, "It would be profitable," as not responsive.

Q. Assuming that there were no Society, assuming that you were acting as an individual author, would it be to your advantage if you published your compositions to retain to yourself the right to public performance for profit and to fix a price for that right at a future date?

Mr. Nye: Same objection as to the last question.

A. I would be compelled to fix such a price if I had no other means of protection.

[fol. 1082] Mr. Nye: I move to strike out the answer as not responsive.

Q. Will you explain your answer, "It would be profitable if it were possible"?

Mr. Nye: Same objection to that question as to the other two.

A. I mean by that that I cannot conceive of the possibility of carrying out the necessary details and machinery for protecting all or even a substantial part of the public performances of my copyrighted works anywhere.

Mr. Nye: I move to strike out the answer as not responsive, speculative.

Q. Why would it not be possible?

A. Because it has been my experience that no one will ever pay for such a thing as a copyrighted piece of creative art unless the person is forced to do so.

Mr. Nye: Note my objection to the last question as calling for a conclusion and immaterial. I move to strike out the answer for the reason that it is argumentative and not a statement of fact.

— Is this your last contract with the Society, Doctor, dated June 28, 1935 (handing paper to the witness)?

A. That is right.

[fol. 1083] Q. Is that your signature and the signature of Joe Young, Secretary?

A. That is right.

Mr. Frohlich: I offer it in evidence.

Mr. Nye: I object to it as immaterial.

(The document just offered was received in evidence and marked Plaintiffs' Exhibit No. 1, of this date.)

Q. Assuming that there are 367 users of copyrighted musical compositions in the State of Nebraska, what would you have to do to protect your performing rights in that State, if you were acting alone?

Mr. Nye: I object to that as calling for speculation; no foundation.

A. I would have to check every possible performance of my work by keeping track of all the activities of all of those users, by engaging clerical assistants in the State of Nebraska, or in some such way keeping check.

Q. Would that involve the outlay of money?

A. It would involve the outlay of so much money that I couldn't start to do it.

Mr. Nye: Objected to as immaterial.

Q. How much money do you estimate that would require?

Mr. Nye: Objected to, no proper foundation laid, speculative. [fol. 1084]

A. To be done properly it would require the engagement of a clerical assistant at a salary of from two to five thousand dollars a year, plus incidental expenses.

Q. How about a lawyer?

Mr. Nye: Same objection to that question.

A. The necessity of legal services would greatly add to the expense.

Q. How much would you say it would cost?

A. If I retained a lawyer to protect me in the State of Nebraska in addition to retaining a clerical representative in the State, I imagine my total bill per year would run certainly well over \$5,000.00, somewhere between five and ten thousand dollars a year.

Mr. Nye: I move to strike out the answer to both the last questions, as speculative, and not statements of fact.

Q. Are you financially able to make that expenditure?

A. By no means.

Q. Would you be required, if you were acting alone, to have investigators go round from place to place in Nebraska to look out for the performance of your compositions?

Mr. Nye: Objected to as calling for a conclusion.

[fol. 1085] A. Yes.

Q. Would these investigators have to go round to practically all the 367 users in Nebraska?

Mr. Nye: Same objection.

A. Yes.

Q. Would they have to go round there frequently?

Mr. Nye: Same objection.

A. Yes.

Q. Have you taken that into consideration in estimating the cost?

A. Probably not.

Q. How much do you think it would cost to make a proper investigation to detect infringement of your compositions in the State of Nebraska and to protect them by infringement suit?

Mr. Nye: Same objection.

A. It would be difficult to estimate the cost of any such action, and such action could hardly be initiated unless I had some representative, some prior representation there. The action would undoubtedly increase the expense and undoubtedly make for a larger return. I would consider that expense in addition to a lawyer to protect my interest, I would consider that in this State an expense which could not now be estimated, depending on the amount of time [fol. 1086] spent in the matter and the amount of work required by the report of my local counsel.

Mr. Nye: I move to strike out all the answers as to the speculation of this witness as to the cost of doing business in the State of Nebraska, for the reason that they are not within any knowledge that the witness has.

Q. Are you familiar with the problems of an infringement suit, Doctor Spaeth?

A. Yes.

Q. Have you frequently testified as an expert in infringement suits?

A. Yes.

Q. Have you testified for me?

A. Yes.

Q. Do you know something of the defenses that are put in in those suits?

A. Yes.

Q. Are you familiar with the requisite amount of skill and experience required to try an infringement suit for copyright?

A. Yes.

Q. Do you think you could engage a lawyer in the State of Nebraska to protect your interests, for less than \$5,000 [fol. 1087] a year?

Mr. Nye: Objected to as calling for a conclusion; matter not within the knowledge of this witness.

A. I have no way of telling that; I was judging by the possible figure for a retainer which would imply no special work; but I am quite aware that any lawyer engaged in actual litigation must charge fees that must average \$5,000 or more a year.

Q. Are you in a position to pay that fee?

A. No.

Q. From time to time when your compositions were published were rights granted to producers or manufacturers of mechanical records and piano rolls to use your compositions?

Mr. Nye: Objected to as immaterial.

A. So far as I know, no such records were ever made of any of my compositions.

Q. Didn't I understand you to say that some one made some records of one of your compositions?

A. Yes; "Francita's Serenade"; the piece is known by two titles; "Francita" from the title of the operetta by Franz Lehar, in which appeared a serenade whose title as a song—it was originally from the German—was "Blaues [fol. 1088] Himmelbett", literally "Heavenly Bed of Blue". The necessities of general, shall be say, purity of American publications forced me to change the "Heavenly Bed" to "A Little Nest," and the song came out in this country as "Heavenly Nest of Blue".

Q. Who published that?

A. E. B. Marks.

Q. Did E. B. Marks grant mechanical rights to it?

A. Yes.

Q. Did you receive royalties for the mechanical rights?

A. Yes.

Q. Do you know whether this particular record was by Kreisler?

A. He made that violin record. I am not sure that I shared in that record, because Fischer also made a record by Jeritza; I also shared in that record. My recollection is that of the mechanicals I received no royalty. I know Kreisler did make a record on the music of that piece.

Q. Did you receive royalties from the record made by Jeritza?

A. That song came later, because it was sung by Richard Tauber at several concerts. That was one of the popular songs in his repertoire and he performed it publicly several times.

[fol. 1089] Q. Did the manufacturer of the record made by Jeritza have the right to license anyone to publicly perform for profit that composition?

A. No, not so far as I know.

Q. Did you ever give any publisher that right?

Mr. Nye: Objected to as immaterial.

A. No.

Q. Did E. B. Marks ever give that right, so far as you know?

Mr. Nye: Same objection.

A. No.

Q. Have you any control over the manufacture of that record, that Jeritza record, with respect to the public performance for profit?

Mr. Nye: Same objection.

A. Personally I have no control.

Q. Have you any control over the sale of those records?

A. Only through my publishers.

Q. Has your publisher any control over the sale of those records?

A. Presumably the publisher can restrain the manufacture of the records from using them in any way except as a phonograph record.

Mr. Nye: I want to make an objection to that last question—[fol. 1090] the subject matter is not within the knowledge of the witness; the matter is fixed by law, as I understand it.

Q. Has the publisher the right to interfere with the sale of the record as a mechanical record?

Mr. Nye: Objected to as calling for a conclusion; matter not within the knowledge of the witness.

A. The publisher could probably interfere with it if he found that the sale was intended for public performance not included in the contract between the record company and the publisher.

Mr. Nye: I move to strike out the answer as not responsive

Mr. Frohlich: I consent to it.

Q. Forgetting the public performance, has the publisher or have you any control over the sale or disposition of these mechanical records once they are made by the manufacturer of the records?

Mr. Nye: I object to that as calling for a conclusion as to a matter controlled by law.

A. So far as I know, I have no control.

Q. Do you wish to continue your present contract, Exhibit 1, with the Society?

[fol. 1091] Mr. Nye: Objected to as immaterial.

A. Yes.

Q. Is the contract now being carried out by the Society and by you?

Mr. Nye: Same objection.

A. Yes.

Q. Have you been receiving royalties from the Society since June 28, 1935, under this contract?

Mr. Nye: I object to that; same objection.

A. Yes.

Q. Do you consider this contract of value to you?

A. I do.

Q. What value do you place on it in dollars and cents?

Mr. Nye: Objected to as calling for speculation of the witness, not a statement of fact.

A. The value at the moment is \$400 a year to me.

Q. Is there reasonable likelihood that this contract will be continued upon its expiration?

Mr. Nye: I object to the question as calling for speculation.

A. Yes, there is.

Q. As a matter of fact, since you have joined this Society you have executed a similar contract each five-year period with them?

[fol. 1092] A. Yes.

Q. Have you reason to believe that you will continue to execute similar contracts each five years with the Society so long as you live?

A. Yes.

Mr. Nye: Same objection.

Q. Have you reason to believe that your royalties under this contract and the renewals of the contract will continue at the same rate of royalties or possibly a greater rate of royalties?

Mr. Nye: Objected to as calling for speculation by the witness.

A. Yes.

Q. What do you base that hope on?

Mr. Nye: I object to the question as calling for speculation, not a statement of fact.

A. I base that hope on the fact that since the records show that my compositions, my work, has become more and more widely used on the radio and in other ways for entertainment, that the Society will more and more recognize that fact and reward me accordingly so far as reasonably possible.

Mr. Nye: I move to strike out the answer as clearly not responsive, and hypothetical, speculative, not stating any facts.

[fol. 1093] Q. Now, if this existing contract between you and the Society, Plaintiffs' Exhibit 1, were cancelled, would you receive any compensation from the Society?

Mr. Nye: I object to that as calling for a conclusion, speculation, and immaterial.

A. I see no reason to think so.

Mr. Nye: I move to strike out the answer as not responsive.

Q. If this contract, Plaintiffs' Exhibit 1, were cancelled, would you receive any compensation from the users in the State of Nebraska for the public performance for profit of any of your compositions?

Mr. Nye: I object to the question as calling for speculation, calling for a conclusion.

A. I would definitely receive no return, unless I found ways of forcing a return. No, I would not.

Mr. Nye: I move to strike out the answer except the word "No".

Q. If this contract, Plaintiffs' Exhibit 1, were cancelled, would you receive any compensation from any other source anywhere for the public performance for profit of your compositions?

Mr. Nye: That is objected to as immaterial; speculative.
[fol. 1094] A. No, unless I found ways of turning up each use and spending the necessary funds to secure a return.

Mr. Nye: I move to strike out the answer, all except the word "No", on the ground that it is not responsive.

Q. Have you the funds with which to enforce your rights and to obtain royalties for the use of your compositions for public performance for profit, if this contract, Plaintiffs' Exhibit 1, is cancelled?

Mr. Nye: I object to that as immaterial; having been asked and answered and gone over in detail.

A. No.

Q. Have you some knowledge of the radio business?

A. Yes.

Q. You yourself are a commentator and broadcaster?

A. Yes.

Q. And have been for some years?

A. Almost since the very start of radio.

Q. Do you know whether or not radio stations in the State of Nebraska frequently perform compositions that emanate outside of the State of Nebraska?

Mr. Nye: I object to that; no proper foundation laid.

[fol. 1095] A. I do know that.

Q. Will you tell us on what you base that information?

Mr. Nye: Objected to as immaterial.

A. I base that information on my knowledge of net work broadcasting in which I have frequently taken part and in which I know that various stations in the State of Nebraska are active.

Mr. Nye: I move to strike out the answer as stating a conclusion only.

Q. Please define "net work broadcasting", Doctor.

Mr. Nye: I object to that as no foundation having been laid.

A. Net work broadcasting is one which originates at one central station such as in New York and is carried over a number of local stations connected with that station.

Mr. Nye: I move to strike out the answer as a statement of a fact which is clearly not within the knowledge of the witness.

Q. How are these stations connected up?

Mr. Nye: Objected to; no foundation laid; immaterial.

A. I am not a scientific expert, but my feeling is that the local station——

Mr. Nye: I object to any statement of what his feeling [fol. 1096] is.

A. (continued) My knowledge of broadcasting is that local stations are connected by direct wires with the central station.

Mr. Nye: I move to strike out the answer on the ground that it is a statement of fact not within the knowledge of the witness.

Q. Have you ever yourself broadcast over net work stations?

A. Yes.

Q. What stations?

A. I have been on the NBC on both Red and Blue net works, the National Broadcasting Company; and also Columbia net works, many times.

Q. When you say "NBC", what do you mean by that; what does that stand for?

A. NBC means National Broadcasting Company, which controls two net works, that is to say, two groups of local stations, one of which is known as the Red net works and the other as the Blue. One of these net works originates in the New York station WEAJ, and the other in the New York station WJZ.

Mr. Nye: I move to strike out the entire answer, and object to the question on the ground it is wholly immaterial.

[fol. 1097] Q. To what parts of the country are these broadcasts which originate in New York City carried by the broadcasting company?

Mr. Nye: Objected to as immaterial; no proper foundation.

A. All over the country.

Q. Are they carried into the State of Nebraska?

Mr. Nye: Same objection.

A. I am certain there are stations in the State of Nebraska that are connected with those stations.

Q. Do you know KOIL in Omaha and Council Bluffs?

Mr. Nye: Objected to as immaterial.

A. Yes.

Q. Do you know WOW in Missouri?

Mr. Nye: Same objection.

A. Yes.

Q. Do you know what net work those two stations are affiliated with?

Mr. Nye: I object to the question as immaterial; no foundation laid.

A. No, I do not.

Q. If these two stations just named were on the National Broadcasting Company net work, would the broadcast performances that emanate from the New York stations of [fol. 1098] the National Broadcasting Company be carried over these local stations?

Mr. Nye: I object to that as clearly not within the knowledge of the witness.

A. The answer is Yes, and it is my impression they are quite large stations.

Mr. Nye: I move to strike out the latter part of the answer, from the words, "It is my impression".

Q. Assuming you were acting alone and no longer a member of the Society, and you broadcast one of your compositions outside of the State of Nebraska or you licensed the broadcast of one of your compositions outside of the State of Nebraska at some station, say in New York, would you be willing to have a radio broadcasting station in the State of Nebraska rebroadcast that performance without any payment to you?

Mr. Nye: I object to the question as immaterial, calling for speculation, not a proper hypothetical question.

A. My attitude would be the same as toward the fee for my actual performance, which is always larger if it is given on a net work broadcast than if it is given on a local station alone.

[fol. 1099] Mr. Nye: I move to strike out the answer as clearly not responsive.

Q. Are you willing to have a radio broadcast in the State of Nebraska perform one of your compositions without paying you anything therefor, providing such performance comes in from a broadcasting station located outside of the State of Nebraska?

Mr. Nye: I object to that as wholly immaterial; calling for a conclusion.

A. I am not willing to have such broadcast made unless the payment at the source includes payment for local broadcast.

Mr. Nye: I withdraw the objection; let the answer stand.

Q. Were any of your works ever broadcast in foreign countries?

Mr. Nye: Objected to as wholly immaterial.

A. Yes.

Q. Did any of those foreign countries broadcasting your works send the performances into the United States on short wave?

Mr. Nye: I object to that as wholly immaterial; not within the knowledge of the witness.

A. I beg your pardon; I misunderstood your former question. My works have been broadcast to foreign countries. [fol. 1100] I have not initiated any broadcast in foreign countries.

Mr. Nye: I move to strike out the voluntary statement of the witness; not responsive to any question.

A. The question was, whether my works had been broadcast in Europe. I misunderstood the question.

Mr. Nye: I move to strike that out also.

Q. Do you transact any business in Nebraska?

Mr. Nye: I object to that as immaterial.

A. Not at the moment.

Q. Have you any agent in Nebraska?

Mr. Nye: Objected to as immaterial.

A. No.

Q. Are you willing to have Nebraska courts take jurisdiction over your property at this time?

Mr. Nye: Objected to as immaterial.

A. No.

Mr. Frohlich: You may examine.

Cross-examination.

By Mr. Hotz:

Q. Doctor, how old are you?

A. I am fifty-three.

Q. You say that the ASCAP is a necessary organization [fol. 1101] for you and others similarly situated, do you not?

A. Yes.

Q. Largely in the protection and detection of violations of the copyright act, isn't that true?

A. I would say more than that; for the general protection of the performing rights of my creative works.

Q. The public performance rights. But the Society does fix the public performance licenses, does it not, the organization does fix prices?

Mr. Frohlich: I object to that as incompetent, irrelevant and immaterial.

A. Prices, so far as my individual works, are by no means fixed, since I draw my royalties simply on the classification, the amount of public performances that my works are getting. But I have never had any indication from the Society that an individual price was stipulated for any work of mine nor have I ever been told that the blanket license that is paid by the year by users was in any sense fixed.

Q. Who determines the price of the public performance rights that ASCAP charges the users; who determines it?

A. The executives of ASCAP determine that.

Q. What amount of the copyrighted music of the United

States would you say was controlled in that manner by ASCAP?

Mr. Frohlich: I object to that on the ground that this [fol. 1102] witness is not qualified; no foundation for that question.

Q. If you know.

A. I have no knowledge of it.

Q. Is it a substantial figure?

A. Yes.

Q. Very substantial?

A. ASCAP includes the majority of the popular composers of standing.

Q. When you receive money from ASCAP you don't receive it on the basis of your compositions that have been used; you receive from them a sum of money which is determined by the classification to which they assign you; isn't that right?

A. That is true, but the classification is assigned on the basis of the frequency of the public performance of my works.

Q. According to whose determination?

A. The determination of a classification committee working with all the statistics available, gathered in multitudinous ways.

Q. Have you attended meetings of the board of directors of ASCAP at any time?

A. I have attended some meetings of the Society and I [fol. 1103] have attended a meeting of the classification committee.

Q. Are you on it?

A. I am not a member of the board of directors and therefore never attended them.

Q. Were you, ever?

A. No.

Q. As a member you have nothing to do with the electing of that board of directors?

A. I have my vote.

Q. Did you ever vote?

A. There have been votes every year; there are ballots sent out, so far as I know.

Q. Do you of your own personal recollection remember of ever having cast a vote for director of the Society?

A. Well, whether for the board of directors or not, I don't

know. I know I am a voting member of the Society and have a right to express my opinions and have expressed them before the classification committee and have also expressed them to Mr. Buck, the President.

Q. What sort of things do you remember voting on, as a member of that Society?

A. There have been votes at our annual business meeting on general questions of policy, and there are frequent votes as to members of committees, and then the classification [fol. 1104] committee would be appointed, which of course is a very important committee, and committees which would hear any complaints that might come up, or anything of that sort. In other words, if a member of ASCAP ever has any complaint or anything he wishes to bring before the executives it is always easy to do so.

Q. Of course you have a grievance committee of some sort. Did you ever read the articles of association of ASCAP?

A. Yes, I have read them.

Q. What particular thing did you ever vote on as a member of that organization, that you recall; just tell me one thing?

A. I have already answered that question. I said my recollection is I voted at various times on members of committees, like the grievance committee and classification committee.

Q. You mean you elected them?

A. Yes, I think there have been votes on them.

Q. When?

A. I am not familiar enough to say that; I know there are a number of ballots sent out.

Q. You know that the articles of association of ASCAP provide that the directors are elected by themselves; they [fol. 1105] are the ones who elected the directors, the directors themselves; isn't that true?

A. I know that a great deal of machinery of ASCAP has been handled by—I won't say a little group, but a group that could be called the directors, a group in whose hands the Society as a whole has been very glad to leave these important problems. They are able men.

Q. Who are those men; who are the chief men in charge of the ASCAP situation?

Mr. Frohlich: I object to that as characterizing, incompetent, immaterial.

A. I frankly couldn't answer that because I don't know well enough. The men I know personally in ASCAP are men for whom I have the greatest respect and in whom I have the greatest confidence—Gene Buck, Mr. Paine, the general manager, and Mr. Mills; they are my chief contacts; they are the men to whom I write or talk if I have any ideas or suggestions.

Q. Those three men stay here in the City of New York, do they not?

A. Yes; not all the time.

Q. They are the moving spirit largely of the Society, are they not?

Mr. Frohlich: I object to that question on the ground that [fol. 1106] it is characterizing, incompetent and immaterial.

A. I would by no means limit myself to those men as being the guiding force of ASCAP. They are the men who I happen to have my contacts with.

Q. Who are the guiding lights of ASCAP, in your mind? I want to get your view on that subject; as a member of that Society I want your views who they are.

A. They are officers and general manager. Mr. Mills was former general manager. They are the three men who are the most important men in ASCAP. There are important men and writers; I know Mr. Deems Taylor; he is a director; Mr. Bernstein, and others.

Q. Mr. Berlin?

A. I know other men but I don't come in contact with them officially.

Q. These men, that is, Buck, Mills and Mr. Paine, those three gentlemen, they devote their sole and exclusive time to the business of ASCAP, do they not?

A. Yes, so far as I know.

Q. Can you give me an idea, based upon the experience that you have had, of about the percentage of the copyrighted music that ASCAP controls, in the manner in which it does its business?

[fol. 1107] Mr. Frohlich: I object to the question on the ground it is incompetent, irrelevant and immaterial; no foundation laid for it; the man is not qualified; nothing to do with the case.

A. I don't know the exact percentage.

Q. I didn't ask you the exact percentage; about what percentage?

Mr. Frohlich: Same objection.

A. I would be guessing, and I would rather not guess. I know a rather large percentage of copyrighted music is controlled by ASCAP.

Q. It is more than half of it, wouldn't you say?

Mr. Frohlich: Same objection.

A. I couldn't say.

Q. Do you know where that information could be obtained?

A. Yes.

Q. Where?

A. In the copyright office in Washington.

Q. In the copyright office in Washington, compared with the records of ASCAP; isn't that true?

A. Very true, that is to say, the catalogue of ASCAP, which I imagine is available, could be compared with the full copyright list in Washington, and my guess is that it [fol. 1108] would be found that a tremendous number of compositions are copyrighted every year in Washington by non-members of ASCAP.

Q. There is no objection to anyone copyrighting any music they want to mail down to Washington, with two dollars?

A. It is a very small matter to send in an application. There is a great deal of that music available and the composers are very anxious to have their music played on the radio and made available.

Q. As a matter of fact, ASCAP controls, does it not, all the music, substantially all the music that has merit?

Mr. Frohlich: That is objected to on the ground it is improper, incompetent, irrelevant and immaterial, no foundation for it; nothing to show that this witness is qualified to speak on the subject.

A. My answer to that question, from my wide knowledge of music in general, is that ASCAP controls an infinitesimal amount of the music of merit in the world.

Q. I mean the copyrighted music.

A. All music was copyrighted at one time. You have raised the question, by your question, of the available music which is in the public domain; it outnumbers tremendously [fol. 1109] the amount of material which is controlled by ASCAP,—that I know.

Q. You are speaking now of copyrighted music?

A. All that music was copyrighted originally, but so much of it is now in the public domain that it is available to any radio station or artist,—music in the public domain which includes all the folk music of the world and all the music of Bach, Beethoven, Wagner, Schubert and hundreds of other composers, all of which is available at any time if a user wishes to make use of it.

Q. Those men were all great artists?

A. Those were the greatest, all of greater importance in the history of music than any particular member of ASCAP. If you say the great music of the world you must include the great masters of music in the public domain.

Q. They were undoubtedly happy in the thought that they had contributed greatly to the art of music?

Mr. Frohlich: I object to that; you are arguing with the witness.

A. Most of those composers received very little for the composition of their music. But since most of them are dead for many years, the law says their works are in the public domain and open to the use of anyone who wishes.

Q. In connection with the falling off of sales of sheet [fol. 1110] music, did I understand you to say that your particular compositions with your publisher show about two thousand copies a year that they were selling now?

A. Not now; that was at the top.

Q. At the top two thousand copies a year?

A. Yes.

Q. Now it has gone down to what figure?

A. My last royalty statement, as I said under direct examination, was a little over fifty dollars, representing the six months' period.

Q. Translated into number of copies, that is how much?

A. It can be figured out in this way: my share as a writer of the words is one-half, a cent and a half per copy; there is a royalty of three cents per copy divided between the music and the words. On the lyric "Down South", which is my best composition, I have drawn one and a half cents and 33 and one-third from mechanicals; add all that together and also take into consideration that that check of slightly over fifty dollars represents not only "Down South" but several other works, it couldn't possibly have sold more than a few hundred at the outside.

Q. A few hundred?

A. In the last year. My mathematics may not be very good.

[fol. 1111] Q. There is no objection to increasing the price of sheet music if the author or composer and publisher wish to do it?

A. No objection except the good old rule of supply and demand. That law still works.

Q. If you get the price up too high it just won't sell?

A. Sheet music has always been priced as high as could reasonably be expected to be collected. The prices of sheet music couldn't be put higher than they have been. The tendency is to lower prices.

Q. If you are receiving \$400 a year now from ASCAP for public performance rights and if the public performance rights are included in the price that you and your publisher fix at the time that the music is sold and collected when the music is sold so that you had a public performance price added right in there, you would have no complaint to make whatever about infringement of public performance rights?

Mr. Frohlich: I object to that on the ground that it is speculative; incompetent.

A. My only answer to such a question is, the possibility has never been suggested, and it seems to me entirely inconceivable that a publisher should be able to control public [fol. 1112] performance rights or to put a price on it. If you compare the \$400 return that I have received in the past year from ASCAP with this 4,000 performance of only one song on the air, and compare that with what I got from sheet music, you will see why I smile.

Q. Have you ever read the Nebraska statute that is in question?

A. I am not sure that I have. I only know in a general way what it is.

Q. What price does your publisher charge for your sheet music when he sells it?

A. Of course, he figures on the basis of a wholesale price.

Q. What is it?

A. Usually about twelve or twelve and a half cents.

Q. Per copy?

A. Yes. It varies, depending on type of music, the sort of piece, whether a production number—that will be sold

at a higher price; a piece of movie music will be sold for more.

Q. If the public performance rights will be included in the sales price and the sales price were arranged by yourself and your publisher high enough to cover a substantial and reasonable income for yourself, then you would have no necessity of an organization such as ASCAP?

[fol. 1113] Mr. Frohlich: I object to that question as speculative and assuming a state of facts not in evidence.

A. I think I can answer that by saying that my total returns from sheet music would be zero; it would be nothing. If the price were put up to include anything at all for public performance rights the sale of sheet music would cease automatically.

Q. Where do you assume that the money is coming from that you get from ASCAP?

A. I know very well where.

Q. Where?

A. From the users, of which a very considerable percentage is paid into the treasury, which is divided among those whose works are entitled to recognition.

Q. You don't suppose those people would cease to use music simply because the public performance price was put on the music?

Mr. Frohlich: That is objected to as speculative and calls for the operation of the witness's mind; it is something he does not know about,—asking what users might or might not do; it is incompetent and immaterial.

A. I can answer that question in this way; I believe [fol. 1114] that they would automatically cease to use it because they couldn't afford to pay the price which the publisher would want; and the case was very clearly proved when the Warner Brothers with their publishers ceased; rather than pay the prices that Warner expected them to pay, they said, "We would rather not use your music," and no Warner music was used during that entire period; the entire time that Warner was outside the ASCAP the music of Warner was boycotted by the radio stations and all others using music.

Mr. Rotz: I move to strike out the entire answer as not responsive.

Q. Warner Brothers were assuming a similar position to music that ASCAP did?

A. Yes.

Q. And it became necessary for users of music to have two licenses if they wished to be free from infringement?

A. They didn't have to have two licenses, if they wanted to substitute the Warner license for the ASCAP license. I have heard of no cases where anyone chose the Warner license in place of the ASCAP license. In most cases I found that the user simply refused to deal with Warner. The only exceptions were certain small stations. Warner licenses were so much higher than the comparatively small [fol. 1115] charge by ASCAP. Users of music in general refused to do business with any such concern like that which controlled large publishers and several motion picture houses and controlled one of the large motion picture companies.

Q. Do you know of any publishing houses that publish vocal and instrumental music, of any size or consequence, that are not members of ASCAP?

A. Any large publishing houses?

Q. Or are they all in the Society, largely?

A. I am not sure, because there are large publishing houses abroad.

Q. I mean, in the United States?

A. In the United States? I don't know of any, but I might be wrong. My impression is—

Q. All or substantially all are in it?

A. Yes, I think they are all members of ASCAP.

Q. When a man copyrights a piece of music or goes to his publisher and makes a deal with his publisher, does he negotiate? Tell us how this is done.

A. The publisher gets a contract and the composer gets a contract as the creator of the work, which is a written contract. There is a contract known as the regular song writers' contract, which always calls for the payment of royalty on the basis of three cents per copy of sheet music, [fol. 1116] to be divided between the writers of the music and the words. Each man gets the same. Recently, with some exceptions, the usual share of the mechanical reproductions is thirty-three and one-third.

Mr. Frohlich: Have you completed the answer?

A. (continued) The main thing is, the publisher assumes the expenses of publication and he agrees to bring out the composition and to exploit it and to pay the creator this royalty.

Q. In other words, the creator of music is helpless without a publisher, so far as getting his composition on the market is concerned; is that right?

A. No; I would hardly admit that.

Q. They would have to do their own publishing?

A. Yes. Sometimes—

Q. Irving Berlin—

Mr. Frohlich: Let him answer.

Q. You have answered the question. It is sometimes done. Irving Berlin is a good example of it? Irving Berlin publishes his own compositions?

A. Irving Berlin was first handled by various publishers before he organized his own publishing house. A man is always free to publish his own compositions.

Q. The publisher gets one-half of the money that ASCAP [fol. 1117] collects from music users throughout the country, including Nebraska?

A. I don't know the figures, but my impression is that the total receipts for distribution are divided equally between the publisher members and the writer and composer members.

Q. And the bill of complaint says that there are about 123 publisher members and they publish a list of them. Those 123 publisher members, then, receive one-half of the net proceeds that come into ASCAP from the State of Nebraska and elsewhere, according to your version; isn't that right?

A. I don't know the details of that; I imagine that is correct, but I am not an officer of ASCAP, and I don't know.

Q. Do you know how many composer members there are in the Society?

A. No, I don't know the exact number.

Q. I want to find out what you know about this Society. What is your best judgment as to the number of members?

A. I know that the Society has its European affiliations.

Q. I am not talking about its European affiliations. I am talking about ASCAP composer members.

A. I haven't checked the total members. I imagine it runs between seven and eight hundred.

[fol. 1118] Q. Now, the money, then, that ASCAP takes in is divided between those persons that compose this half or the other, whatever they are; the composer members; and the other half, the 123 publishers?

A. I am not sure that is so. You are asking now questions that I am not in a position to answer at all. I haven't that type of mind. My mind doesn't work about those matters. I know my own problems and what ASCAP means to me. As to the publishers, I can't say.

Q. When Warners pulled out of ASCAP or settled its differences with them, do you know anything about ASCAP'S refusal to reduce its fees to compensate the users for the withdrawal by Warner?

A. I don't know the financial details of the situation at all.

Q. Have you ever tried to figure out a plan of collecting your public performance rights at the time that copyrighted music was sold; have you ever put in any time or thought on that subject?

A. I have to be convinced that I could work out any plan.

Q. You never tried it?

A. Yes, I have tried to keep track, for my own personal satisfaction, of the performances that were made, and I frequently get letters from people asking if something of [fol. 1119] mine can be performed at a certain place, and if it is a charity where they are not making a profit out of it I have given a permission without bothering ASCAP at all. Another place where they want something where they are making a profit, I said I had no right to do so.

Q. There is no separation of the funds that you derive from the users of copyrighted music, by ASCAP; is that true?

A. Any separation?

Q. No separation of the funds? They don't go out and collect royalties on your music and turn it over to you?

A. No. The beauty—

Q. I am not asking you about the beauty; I am asking what ASCAP does.

A. ASCAP deals with lump sums, which it distributes equitably.

Q. Give us the dates of your copyrighted music.

A. I can't do that off hand.

Q. You can't do that off hand?

A. No. The records are with my publishers, mostly E. B. Marks. They run roughly from 1920 or a little earlier; some are earlier than that; they run over the last 18 or 20 years.

Q. When is your nearest expiration of copyright that you can give us?

[fol. 1120] A. I imagine "Chansonette" would probably be the nearest one for renewal, and that has rather lost its value by being superseded by "The Donkey's Serenade." "Chansonette" you know was something I worked out with Friml in my early days with the American Piano Company. I am not thinking seriously about renewals; they are at least ten years ahead of me.

Q. When you estimated for Mr. Frohlich the value of your copyright, you were merely speculating, were you not, on those figures?

A. I was judging by the average return during the years I have been drawing royalties and the possibility of royalties for the future, and I was naturally somewhat influenced by the confidence that I have in the compositions.

Q. How long have you been getting \$400 a year from ASCAP?

A. Only during, I think, the past year, at the outside. I think this is the second year I am on that classification.

Q. It was increased up to \$400; it was never cut down?

A. It was never cut down? Yes, I think once my classification was reduced.

Q. What did you say it was before you got \$400?

A. I think it was \$80 a year.

Q. How long was it \$80 a year?

[fol. 1121] A. Five or six years, is my impression. I am talking simply from a general recollection. It finally raised, and this final jump to \$400 was from 200; from 200 to 400; it was doubled.

Q. Was it increased due to the popularity of your music?

A. It was due particularly to the fact that I was getting more use of my music than ever before.

Q. How do you know?

A. Because I had the figures. I was given the figures by ASCAP—my publishers, I mean, who had gotten them from ASCAP investigators.

Q. How does ASCAP judge that?

A. There are paid people who do that work, paid, I imagine, by ASCAP.

Q. It is largely over the radio, isn't it?

A. Radio is by far the largest user.

Q. Then the present value of your public performing rights is fixed at \$400 is that right?

A. That is the way it is estimated by ASCAP at present.

Q. Suppose they decide to pay to you \$200 instead of \$400, what would you do about it?

A. I would probably object and would have to be shown good and sufficient reason for the change. In fact, once [fol. 1122] when I was reduced I objected.

Q. What did you do?

A. I came to the classification committee and stated my grievance.

Q. Suppose it had not complied with your request, what would you have done?

Mr. Frohlich: I object to that as highly speculative.

A. I think I would be free to resign from the Society.

Q. Then you wouldn't have gotten anything.

A. I don't see how I could. I have to trust ASCAP to give me a square deal, and I try to do my part. I trust my publisher the same way. He gives me a split of the royalties; I have no way of checking the figures; he told me he sold 100 copies of "Down South" and I have to accept that.

Q. You have no way of knowing the value of your public performance rights, for instance, next year; there is no way of estimating that?

A. No.

Q. You have no way of estimating nor of figuring in two or three years from now on the balance of the period of your copyright?

A. I have never had any value set upon my public per-[fol. 1123] formance rights until I became a member of ASCAP. There was no public performance value in any of my work. Whatever value there is in the future is due to my membership in ASCAP; otherwise it would cost more than it would bring me.

Q. It would depend on the deal that you and your publisher might work out, is that right?

A. My publisher would do nothing about that. My publisher is too concerned with selling sheet music. My pub-

lisher has never shown any interest in trying to protect my public performance rights. My publisher knows I am well taken care of by the Society.

Q. In the radio broadcasting from the emanating station here in New York, it comes out to Nebraska, does it not, by wire?

Mr. Frohlich: Objected to; if you state that as a fact we will concede it.

A. That is my impression.

Q. After it goes to Nebraska by wire it is re-broadcast in the local station; isn't that true?

A. Essentially I imagine that is what happens. I am not a scientist; I don't know the exact process. I know a program emanating in a New York station is distributed through various local stations, which I assume is through wires and which could be called re-broadcasting. I am not [fol. 1124] familiar with technical terms.

Q. A copyrighted program originating here in New York and picked up in Nebraska must have, in order to grow into being or use, a local broadcasting station out there in Nebraska where it is picked up and re-broadcast; is that true?

A. No; there are stations in New York powerful enough to be heard directly in Nebraska. I am quite sure of that.

Q. What ones, for example?

A. I think WOR, among others. I was on WOR here in New York on a purely local broadcast,——

Q. Not as a practical matter?

A. I might say as a matter of fact I received letters from Oklahoma and Texas, where I was heard at that time.

Q. That is an exceptional case, isn't it, Doctor; not a practical proposition?

A. You asked me whether it was necessary to have a local station in Nebraska in order to hear a New York broadcast. I have had the experience of getting letters from Texas, after a local New York broadcast. There is also station WLW in Cincinnati, a tremendously powerful station, which does not require a net work at all. I think WLW has proved that it has gone into all the States of the United States, I think.

Q. You have testified, have you not, in infringement [fol. 1125] suits?

A. Yes.

Q. About what kind of copyright infringement suits were

those; between individuals that were quarreling about prior rights?

A. Usually a case of that sort is between an individual and a publisher, and sometimes a motion picture company where a copy of music has been used on the screen. An individual, as a rule, is trying to collect money from a publisher or from a motion picture company and says that his melody or his song has been stolen. In most of those cases I have appeared for the defendant because I always appear on the side which I feel is right in the case, and in the majority of the cases the plaintiff is merely imagining the fact that his music was taken, and that is the first thing for me to show. That is usually in a suit in which the individual is suing a publisher or motion picture company.

Q. Have you ever testified in a case where the public performance rights were involved?

A. No, I don't think so. I would like to correct that last answer. There were a couple of cases in which public performance rights were definitely involved. There was a case in Syracuse in which a certain road house or some such [fol. 1126] place of entertainment was trying to prove that every song, every popular song published, was in the public domain, because all these songs were based on the seven notes of the diatonic scale and the twelve tones of the chromatic scale, and therefore Irving Berlin or any other composer couldn't legally copyright any of his compositions. They actually tried to retain me as a witness on their side. I, of course, told them that *that* their case was ridiculous. I then appeared for ASCAP to clear up a situation which was obvious, that since the United States had given a copyright for these numbers they are, therefore, entitled to legal protection; and even if one could find material that appeared many times, that its creator has put it together in this particular way, for which the United States Government had given him a copyright, and they were entitled to protection. That was a case where performance rights were included.

Q. Your publisher has the right from you, does he not, to give copies to users occasionally, particularly broadcasting companies and leading artists?

A. He has a right to give away such copies as he considers helpful for promotion of the number.

Q. As advertising?

A. Yes.

Q. What is one of the methods of popularizing a piece [fol. 1127] of music that you know now?

A. The only way of popularizing music is by having it heard.

Q. And that, I presume, is the job of your publisher largely?

A. The publisher is principally interested in that; the creator is also.

Q. It is usually the publisher's job?

A. It should be, but if a publisher is not as largely interested in a composition as I am, I am trying to help it along, and I have done it.

Q. You advise with your publisher and fix the price that your sheet music is to sell, do you not?

A. No, the publisher does that.

Q. He decides that entirely?

A. Yes, he decides on the price that he thinks can get the best market.

Q. The composer, then, has nothing to do with the price that he gets for his sheet music? You want to go on record as saying that?

A. I wouldn't say that he has nothing to do with it. Of course he is consulted. I happen to be a writer of books also, and I am consulted by my publishers; but if they think [fol. 1128] that it will bring two dollars, that is the price, although I think the proper price should be one dollar and I know I will not get as much by pricing it at two.

Q. So you do sit down and work it out with your publisher?

A. That is stating it a little too broadly. My publisher says, "I think we can sell this for such and such a price," and I agree.

Q. What way do you have of checking with your publisher the number of copies he has sold?

A. I have no way at all.

Q. Except his records?

A. I have to take my publishers word for it. If I thought a clerical error had occurred I should think that was justification for examining his records. I have no reason for thinking that a music publisher has falsified his records. He is doing the clerical work that I haven't the time to do or the facilities for doing.

Q. ASCAP doesn't do that for you?

A. With regard to performing rights.

Q. As to your publisher?

A. ASCAP is not interested in sheet music returns; that is my problem.

Q. You and your publisher?

[fol. 1129] A. Yes.

Q. About what is the division that you have on sheet music with the publisher, between yourselves; what is the relative division of the price?

A. A song that will sell at wholesale for perhaps twelve or fifteen or perhaps twenty cents—I don't know if it goes as high as that—my share is three cents if I have done the words alone, the publisher carrying the expense of printing, exploitation, cover design, and promotion in general.

Q. What is the biggest source of income of ASCAP? What is its biggest source of income? I want to know what you know about that as a member.

A. I have never inquired into that, but it is my assumption that radio contributes the largest sum to the income of ASCAP.

Q. Do you know how much it is annually?

A. No, I do not. I had some figures on that a year or so ago. I referred to them in some lecture, but I haven't them now.

Q. Do you know what the total income of ASCAP is annually?

A. I know it has risen gradually. I know it passed the [fol. 1130] three million mark, and it may have risen to four.

Q. Where are the publishers of music located, largely; in what part of the United States?

A. New York is the chief center.

Q. Do you know of any large publishing house that is not a member of ASCAP?

Mr. Finkelstein: I object to that; it has already been asked and answered.

A. I will be glad to answer the question again, because I happen to know of a great many so-called publishers. In the music industry they are known as "song sharks". They publish a great many compositions. I know of one that has 80,000 clients, for each of whom they have pub-

lished one piece, which has been entered by the United States Government at Washington. These so-called sharks are constantly offering to radio stations; they are trying to do what a regular composer finds it impossible to do; they make claims which are absurd.

Q. Claims of what?

A. Claiming to be publishers and distributors. I think it has been proven that they collected a million dollars from amateurs, obtaining money from gullible amateurs. I have been fighting against these song sharks, but I know from my contacts with that business, if you can call it a business, [fol. 1131] that there are thousands of compositions published and copyrighted every year outside of ASCAP, and if one such concern actually has 80,000 clients, which I believe is true, that concern might be called a larger publisher than anyone in ASCAP at the moment.

Q. Is there any merit to the publications of an organization such as you have mentioned, that makes fools out of people?

A. There is occasionally.

Q. By accident somebody will have something meritorious?

A. In fact, many songs do not arrive at publication which undoubtedly are worthy.

Q. The thing that I am trying to bring out, Doctor, is that the substantial number of all of the publishing music houses, that is, publishing houses that put out vocal and instrumental music, are members of the ASCAP organization.

A. I would say that a substantial amount of this popular music of commercial value is controlled by ASCAP.

Q. That is all for that. How do you pay this ten dollars to ASCAP, this membership fee? Do they bill you for it and you send them a check for \$10, or do they just take it, deduct it?

A. I get a bill and I send a check.

Q. And you send a check in?

[fol. 1132] A. That is the way it has always been done. I have never known of any deduction, so far as I know, and I always paid my dues regularly.

Q. Buck, Mills and Paine are paid salaries, are they not?

A. My impression is that they are. I can't imagine anyone doing that amount of work—

Q. —for nothing. Do you know what Mr. Buck's salary is?

A. No, I do not.

Q. Do you know what Mr. Mills' salary is?

A. I do not know what any of those salaries are.

Q. Nor Mr. Paine?

A. No.

Q. Is Mr. Mills a composer, writer or author?

A. I don't know him in that way.

Q. Is that true of Mr. Paine, that he is not an author, composer or writer?

A. They have both been connected with publishing members, I am sure.

Q. I am getting at whether they are publisher members?

A. No.

Q. Nor composer members?

A. No.

[fol. 1133] Q. I think Mr. Buck claims to have written compositions?

A. Buck is definitely a composer and writer. He did a great deal of work.

Q. How many years has it been since he did anything?

A. Buck's most recent writings have been largely for the Dutch Treat Club. He may have done things for professional shows. He was always one of the leading writers for Ziegfeld Follies. I know that Buck worked for the Society for several years without a cent of salary; I remember an annual meeting at which it was talked about.

Q. Do you know whether Buck draws from the Society any income from public performance rights?

A. My feeling would be that if he has any compositions still protected by copyright he would have a perfect right to that. I don't know the circumstances.

Q. What was your answer?

A. My answer was that if he still has any productive work still protected by copyright, he draws royalties, and they were perfectly justified. Mr. Buck is in the double position of being a creative writer and also a salaried official.

Q. As I understand it now, as a member of that Society, who fixes the price, we will say, that the broadcasting stations, for example in the State of Nebraska, pay to ASCAP?

[fol. 1134] A. As I understand it, it is fixed by our board

of directors or some committee working for that special purpose.

Q. Is that true of all other users?

A. I think that is true. I don't think any one individual decides upon those rates. The rates are fixed after very careful examination. I know that in the case of motion picture theatres—

Q. That is all; you have answered the question. The point that I wanted to bring out further, Mr. Witness, is that they fix whatever charges or licenses that are collected for your music in the State of Nebraska.

A. It doesn't apply to me alone; the license is always a blanket license. Our committee, whatever it is, arrives at these rates through a careful examination of the profits made by the users in that locality; and it is definitely fixed in the case of a motion picture theatre by the number of seats in that theatre, something like one cent a seat.

Q. It happens to be ten cents.

Mr. Bennett: Ten or fifteen cents a year.

A. Per year? A ridiculously small sum; it is a very small sum, since they are so dependent on music. I thought it was a month.

Q. Doctor, do you know a definition, as applied let us [fol. 1135] say, to modern dance music, for such compositions as would be termed "popular" as distinguished from "standard"?

A. The distinction usually applied is that a popular work is transient or ephemeral, and a standard work is a lasting one. A popular work depends for its return upon a short and very happy life. A standard number depends on a long life, not necessarily so happy.

Q. Do you know of any popular music, now that you have given the definition, now in the public domain?

A. Yes.

Q. Give us some.

A. For example, all the songs of Stephen Foster; every song of Stephen Foster was written as a popular song.

Q. Under your definition would it not become standard now, under your definition?

A. It is still a popular song, however. Every popular song writer hopes that some of his popular songs will become standard in time.

Q. We are talking about today, Mr. Witness; we are talking about today. What I want you to answer, if you can, in the light of the definitions you have given, is, do you know of any popular, modern popular music that is in the public domain?

[fol. 1136] A. Yes; a very good example is the tune of "Loch Lomond" which is very popular at the moment, a tune in the public domain. The sheet music of it has been tremendously popular.

Q. Was that ever copyrighted?

A. It was a folk song. The sheet music was copyrighted only so far as the arrangement was concerned. Now, take the music of "Loch Lomond"—

Q. You have given that one. Any others?

A. Yes. I have mentioned Foster. I want to point out a specific song; the song of "Oh, Susanna" was a campaign song for the Republicans. Mr. Landon used that song. It achieved a new popularity and certainly arrived at a sale of sheet music as the result of that. It was a popular song.

Q. Then you say that all of Stephen Foster's songs are in the public domain?

A. Yes, they are all in the public domain.

Q. Have you ever taken it up with Mr. Buck? Do you think he would agree with you on that?

A. Yes. It is available to anybody, as Foster wrote it. The original publications, which are in the library at Pittsburgh at the Foster Memorial; are in there. Anybody can use it.

Q. Is that true of "Loch Lomond"?

A. Yes. There is a copy of "Loch Lomond" in practically every song book in the world. When a man makes an arrangement of it, that is copyrighted.

Q. When the public becomes acquainted with it, do they want the original melody or do they want the modern arrangement?

A. The public must have the combination of both. The original melody is a necessity as a basis for the variations that modern swing puts into that basis. The reason the old tunes are being dragged out is because not enough modern melodies are being brought out by our men, so they bring out the old tunes and arrange them effectively.

Q. So that those new arrangements are kept copyrighted?

A. Yes; and any arranger in a studio or motion picture

house or restaurant could take those tunes and make his own; and many of them do.

Q. ASCAP has a great amount of those copyrights under its control and supervision?

A. A very small percentage as compared with the original compositions which it controls.

Q. Give us some three or four outstanding musical compositions where the modern arrangement has been copyrighted and which otherwise were free but for that?

A. "Loch Lomond" is a very good example.

[fol. 1138] Q. That is copyrighted; that is, the modern arrangement is copyrighted?

A. "Loch Lomond", I don't know how many arrangements there are; "Loch Lomond" is open to unlimited arrangements. I used a negro spiritual, "Oh, Yes;" I arranged that myself; I get royalties on the arrangement. A tune recently declared in the public domain is "Home on The Range".

Q. That is what I want to get at. Why do you say it was declared in the public domain?

A. Because there was some argument as to its origin. It was proved to have been written in Colorado. There was some litigation which determined it was not an infringement.

Q. It was free?

A. It was an old cowboy song. It appears in the Rotary Song Book; they get credit for the arrangement.

Q. Their arrangement?

A. Yes. - I think the first man who arranged "Home on The Range" was David Guion; I think he was the first man to arrange it. He also arranged "Turkey In The Straw;" that was another old arrangement; and "The Arkansas Traveler".

Q. You have used an illustration, "Home On The Range." Can you give us, of your own knowledge, any useful arrangement of that song that is not copyrighted; do you have anything in mind?

[fol. 1139] A. Yes.

Q. What, for example? I mean useful for commercial practical use.

A. You will find "Home On The Range" printed, I think, in a number—at least a dozen—of song books of the general type which contain most of the public domain material—

in the Kiwanis and Rotary Song Books, and there is a book called "Everybody Sing".

Q. What I want you to exclude from your answer are those pieces of music that are in use for limited purposes. I want you to tell if you can those where there is a public performance right that is being collected upon. Can you tell any arrangement of "Home On The Range" where public performance rights are collectible, that is dedicated to the public domain, ordinarily would be collectible, I mean?

A. I believe there must be some such arrangements. The arrangement that occurs in a general song book. Of course, where there is a new arrangement, such arrangement is the property of the arrangers. It remains the property of the orchestra leaders. They are jealous of those properties.

Q. They are of some value to an orchestra leader in building up his music library?

A. Yes; they are very jealous of them. I can refer you to two articles which I wrote for Cosmopolitan. The article [fol. 1140] on "Jazz" sets forth that case very clearly. The leaders don't want it published. They hold onto it. It is their own manuscript.

Q. How are public performance rights handled in regard to such pieces?

A. There is no way to get them; they are carefully guarded. If anyone picked them up from a radio performance they would be sued immediately.

Q. Those orchestras and those people control their own public performance rights?

A. Yes, for their own pieces, for a limited number of pieces.

Q. Are there a large number of authors and composers that you know that are not members of ASCAP?

A. There are many. All these so-called would-be composers; of course, the country is full of those. The very fact that a composer must have five songs published before he can become a member holds the number down considerably.

Q. Before a person can get into ASCAP he has to have the approval of the Society's directors?

A. Any person who has had published five pieces of music by a recognized publisher, not privately, is eligible to ASCAP. The record is then examined, and if the pieces are either of a type that represents a popular commercial or

[fol. 1141] of a type that represents a musical value—and we have many such composers in ASCAP—then that person is elected to ASCAP.

Q. What do you mean by “recognized publisher”?

A. By “recognized publisher” I mean a publisher who does a legitimate business at a definite address and who brings out songs regularly, in fact, who maintains an office force and does business in a way that any reputable concern would. In other words, I can make myself a publisher by bringing out only one piece of music, but I wouldn't be a recognized publisher.

Q. Are there any recognized publishers that you know about that are not members of ASCAP?

A. There may be; I am not prepared to say.

Q. It would be the exception if there were?

Mr. Finkelstein: Objected to. There is no foundation for that.

Mr. Hotz: You qualified the witness as an expert.

A. I would have to go through the list; I would have to check it up.

Q. Have you a list of publisher members of ASCAP here? Otherwise I would be glad to furnish one.

A. Actually I think I have seen such a list.

[fol. 1142] Mr. Hotz: That is all.

Redirect examination.

By Mr. Frohlich:

Q. Do you know, Doctor, of any association of users of music?

A. The National Broadcasters Association.

Q. Do you know of any other association?

A. Well, there are all kinds of associations of theatrical managers and so on.

Mr. Nye: We object to that as immaterial.

Q. Do you know of any association of motion picture exhibitors?

Mr. Nye: That is objected to as immaterial.

A. Yes.

Q. Any dance hall association?

A. Yes.

Q. Do you know whether any of those associations ever negotiated with the Society with respect to rates?

Mr. Nye: Objected to as not within the knowledge of the witness.

A. I imagine that there was.

Q. Have you heard of the Hotelmen's Association?

A. I know there is such an association.

(Recess until 3:45 p. m.)

[fol. 1143] (Deposition of Edwin H. Morris.)

(After Recess.) 3 p. m.

EDWIN H. MORRIS, called as a witness on behalf of the plaintiffs, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

Q. What is your name and address?

A. Edwin H. Morris, Oak Lane, Hummocks Road, Larchmont, New York.

Q. What is your occupation, Mr. Morris?

A. Music publisher.

Q. With what firm are you connected?

A. Harms.

Q. Harms Incorporated?

A. M. Witmark & Sons, Remick Music Corporation.

Q. How long have you been connected with those companies?

A. Since 1929.

Q. What is your official connection with the companies at this time?

A. Vice-President.

Q. Have you anything to do with the management of the business of those companies?

[fol. 1144] A. Yes, I manage the companies.

Q. How many years have you been engaged in the publishing business?

A. Approximately ten.

Q. Do you know the other publishers of music in the City of New York?

A. Yes, quite well.

Q. Have you an acquaintance among the authors and composers of music in the City of New York?

A. Yes.

Q. Your companies, are they members of the American Society of Composers, Authors and Publishers?

A. Yes.

Mr. Frohlich: Will it be stipulated that the contracts between Harms, Inc., Remick Music Corporation and M. Witmark & Sons and the American Society of Composers, Authors and Publishers are substantially identical with the contract, Exhibit 2?

Mr. Nye: The same in form and substance.

Mr. Frohlich: It is stipulated that the contracts between the members of the American Society of Composers, Authors and Publishers and the Society, including contracts [fol. 1145] of writers, and contracts of publishers, are substantially the same as the contract Exhibit 2 in evidence.

Q. Mr. Morris, where is the main office of Harms, Incorporated?

A. 1250 Sixth Avenue.

Q. Where is the main office of Witmark?

A. They are all the same.

Q. All the companies that you represent are located in the same place?

A. The same building.

Q. Are they occupying those offices under any leasehold?

A. Yes.

Q. Do you know how long a lease you have there?

A. Five years with an option for five more.

Q. What rental do you pay under that lease?

A. Do you want each company?

Q. Yes.

A. This is not accurate.

Q. Give us an approximate figure.

A. Approximately 12-5.

Q. For each company?

A. For all; I can't give you the separate amounts.

Q. \$12,500 would cover the rental for all the companies? [fol. 1146] A. Yes.

Q. Have you many employees?

A. Approximately fifty to sixty, that is in that particular division.

Q. Harms, Inc. is engaged in the business of publishing sheet music?

A. That is right.

Q. And has it specialized in any particular kind of sheet music?

A. For a number of years, production music, show music.

Q. What do you mean by production music?

A. Legitimate theatre.

Q. You mean that Harms, Inc. publishes musical compositions that are contained in musical shows that are produced upon the spoken stage?

A. Musical shows, that is right.

Q. Is M. Witmark & Sons specializing in the same kind of music business?

A. No, not in recent years; popular and picture compositions.

Q. Did they formerly specialize in production music?

A. In former years, some years back.

Q. What kind of music business does Remick Music Corporation do?

A. Popular and some picture.

[fol. 1147] Q. Have you a form of contract which is typical of the contract entered into between Harms, Inc. and its writers and composers for its production music?

A. I think I have.

Q. Will you be kind enough to produce that contract?

A. Here are two contracts, one for Lew Fields and Vincent Youmans (producing papers).

Mr. Frohlich: I offer them in evidence.

(The papers just offered in evidence were marked Plaintiffs' Exhibit No. 15, of this date.)

Q. Have you another form of contract between Harms and a composer or writer?

A. Yes; George Gershwin (producing paper).

Q. Is this all one contract?

A. And Cole Porter.

Q. You have produced a contract between Harms and George Gershwin and a contract between Harms and Cole Porter?

A. Yes.

Mr. Frohlich: I offer them in evidence.

Mr. Nye: I object to the materiality of these exhibits.

(The papers just offered in evidence were marked respectively Plaintiffs' Exhibit No. 16, and Plaintiffs' Exhibit [fol. 1148] No. 17, of this date.)

Mr. Frohlich: May we be permitted to make photostatic copies and to include the copies in the record in place of the originals, with the same force and effect as the originals?

Mr. Nye: Yes.

Q. Will you outline very briefly to us, Mr. Morris, the procedure followed by Harms, Inc. in arranging for the publication of sheet music pursuant to a contract such as the contracts that have just been received in evidence; what is done?

A. The composer submits a number for publication. If it is acceptable it is published in regular sheet music form, and if we intend to exploit it to any degree it is necessary to have dance orchestrations and vocal orchestrations. That about covers the material necessary.

Q. Is it customary for Harms Inc. to copyright its musical compositions as unpublished works or as published works?

A. I am a little confused on that. I believe we follow both practices.

Q. Is there any set practice on it?

A. Maybe you can clarify that a little more.

[fol. 1149] Q. Do you frequently or do you at all, after you have obtained the rights of a composition from the author or composer, refrain from publication by registering such composition for copyright under section 11?

A. Quite frequently. If it is our intention to publish we send a manuscript.

Q. When you thereafter publish the composition then you copyright it as a published work?

A. Yes.

Q. Is there any particular reason why Harms, Inc. sometimes copyrights a work as an unpublished work instead of a published work?

A. Yes; so as to protect the composer as well as ourselves.

Q. Is it done in order to keep the publication from interfering with any other rights in the composition?

A. I don't quite understand that.

Q. Well, now, your company specializes in production numbers. When a production is on the stage it appears in the production, the particular composition to which you have obtained the rights from the author and composer; is it desirable from any financial or business point of view to permit the composition to be played on the stage before the composition is sold to the general public?

A. I haven't had much experience with shows. That is [fol. 1150] a field I haven't handled. Mr. Max Dreyfus handled that.

Q. Is it the practice of Harms, Inc. on occasion to restrict musical compositions?

A. It has been, yes.

Q. What compositions are restricted by it?

A. At the moment?

Q. At the moment.

A. Very few at the moment; in the past there was quite some number.

Q. What compositions were restricted?

A. "Rhapsody In Blue"; a good many of the productions such as "No, No, Nanette," "Hit the Deck," "Scandals", and numerous other musical comedies.

Q. For how long a period were some of these compositions restricted?

A. A number of them were on the Society's restricted list for several years.

Q. Was there any particular reason for restricting those compositions?

Mr. Nye: I object to that as calling for speculation.

Q. Does the restriction of a composition bear any relation to the performance of the number on the stage or in a motion picture?

[fol. 1151] Mr. Nye: I object to the question as calling for a conclusion.

Q. Is there any relation between those two things?

A. No.

Q. So you can't tell us why you restrict these compositions?

A. Yes, I can tell you.

Q. Why?

Mr. Nye: Objected to as calling for a conclusion.

A. Most of the producers request that numbers be restricted so that it won't in any way injure the musical play during its run, and I believe in some of the agreements it is stipulated that the right of restriction rests with the producer.

Q. If the particular number so restricted were played, were open to the public and could be performed on the radio and in hotels and elsewhere, would that affect the life or value of the composition in the production or in the picture?

A. Yes, I believe it would; it would shorten the life.

Q. It would shorten the life of the production or the picture?

A. Yes.

Mr. Nye: Give me an objection before that last answer; [fol. 1152] calls for a conclusion and opinion, without foundation.

Q. Do you know how much money is invested in these musical productions—the average musical production that is put on as a musical?

Mr. Nye: No foundation; calling for a conclusion and speculation.

A. I can give you one specific play that I happen to know about, "Fifty Million Frenchmen", approximately \$275,000.

Q. Who produced that play?

A. Getz.

Q. E. Ray?

A. Yes.

Q. Did that play contain any songs published by Harms Incorporated?

A. It did.

Q. What were the names of the songs?

A. I will have to refresh my memory. I may get a little help from the boys here if they can remember it. It is very difficult to remember titles.

Q. Were any numbers restricted by Harms, Inc.?

A. The entire score was restricted during the run.

Q. That was restricted during the full run of the play in New York?

[fol. 1153] A. Yes.

Q. Did I understand you to testify that you came to Harms, Inc. about ten years ago?

A. Approximately nine or ten years ago.

Q. Approximately at that time can you remember the names of any outstanding hits that were published by Harms Inc.?

A. I would much prefer to use one of the other companies which I am much more familiar with.

Q. Which company are you much more familiar with?

A. Witmark at that time.

Q. Can you tell us what outstanding hits were published by M. Witmark & Sons?

A. During the first year I remember "Tiptoe Through The Tulips," "Painting The Clouds With Sunshine," "Song of The Nile."

Q. How many copies of the sheet music of those songs were sold, if you know?

A. In the case of "Tiptoe", approximately 650,000; "Painting the Clouds," 700,000; "Song of the Nile", about 450,000.

Q. Can you tell us the names of any recent hit songs published by M. Witmark & Sons?

A. "Vini Vini."

Q. Is that an outstanding popular hit?

[fol. 1154] A. Yes.

Q. And about how long ago was that published?

A. About six months ago.

Q. Can you tell us approximately the number of copies of sheet music that were published?

A. About 45,000.

Q. Does that represent about tops in the sale of sheet music today?

A. Pretty near; there are occasionally hits that may run more, but that is about it.

Q. Has Harms, Inc. or Witmark or Remick sold any millions of copies of any composition in the last five years?

A. There hasn't been any of those since I have been in the business.

Q. What is the life of a hit song today.

A. Depending on the type, from six to ten weeks.

Q. What was the life of a hit song published ten years ago, published by one of your companies?

A. Six months.

Q. In your contracts with composers and writers do you undertake to pay them a percentage of the moneys received from the manufacture and sale of mechanical reproductions of their compositions?

A. Yes, we do.

[fol. 1155] **Q.** Has that been the practice in all of your contracts over the years?

A. Yes.

Q. Do you have any contracts with any composer or writer under which you undertake to pay such writer or composer for any public performance for profit of their composition?

A. No.

Mr. Nye: I object to the question as calling for a conclusion.

Q. Your companies own the copyrights of the compositions published by them?

A. Yes, that is right.

Q. Do they license manufacturers of piano rolls and disk records to mechanically reproduce the compositions, under written contract?

A. Yes.

Q. Have you with you any form of contract?

A. I don't know whether I have that or not. No, I have not.

Mr. Nye: We will stipulate that it is the same in substance, if it is. Let him look at it (handing paper to the witness).

The Witness: That is the same.

Mr. Frohlich: It is stipulated that the mechanical reproduction contracts issued by Harms, Inc., Remick and M. Witmark & Sons, are substantially identical with Plaintiffs' Exhibit 12.

Mr. Nye: We agree to that, in substance.

Q. Under your contracts with mechanical companies do you reserve any control over the sale of the records and piano rolls by those companies, in the State of Nebraska?

Mr. Nye: Objected to as calling for a conclusion.

A. Yes, the contract calls for what we call home consumption.

Q. Are these companies permitted to sell these disks in the State of Nebraska and in other States of the Union?

A. Yes, every State.

Q. You don't appoint these companies as your agents to fix the price or collect any moneys for you on any rights in connection with the public performance for profit of those compositions, do you?

A. No, we do not.

Q. Would you be willing to permit those companies to fix a price and to collect any moneys for you for the public performance for profit of these compositions within the State of Nebraska?

[fol. 1157] Mr. Nye: Objected to as calling for a conclusion and speculation.

A. No.

Q. Let me read to you a section of the Nebraska law which is at issue in this case (reading Section 2, subdivision "(A)" of Legislative Bill No. 478).

Now that I have read this section of the act to you, would you be able—when I say "you" I mean your companies, Mr. Morris—would you be able to determine and fix a price to be charged for the use or rendition of your copyrighted musical compositions within the State of Nebraska for all uses and purposes?

Mr. Nye: I object to the question as calling for conclusion, speculation; no foundation.

A. No.

Q. Have copies of your musical compositions been sold within the State of Nebraska over the years?

A. Yes.

Q. Have they been sold to jobbers and dealers within that State?

A. Yes.

Q. Do any of your companies have any branch offices in the State of Nebraska?

A. No.

[fol. 1158] Q. Now, the copies of the compositions that were sold to dealers and jobbers in the State of Nebraska are now property of the dealers and jobbers?

A. Yes.

Q. Have you any control over them or can you demand them back?

Mr. Nye: Objected to as calling for a conclusion.

A. No.

Q. If you were to determine and fix the price to be charged for the public performance for profit of your copyrighted musical compositions within the State of Nebraska, what factors would you have to take into consideration?

Mr. Nye: Objected to as calling for speculation.

A. Well, the number of licenses.

Q. Assuming that there are 367 establishments in the State of Nebraska that use music, copyrighted musical compositions published by your firm, how would you go about it to determine what price each of those 367 establishments would have to pay you on each one of your compositions for public performance for profit?

Mr. Nye: Objected to as calling for speculation.

[fol. 1159] A. I wouldn't know how to go about it.

Q. Would you be able to fix at this time the price for the television rights of any of your compositions within the State of Nebraska?

Mr. Nye: Objected to as calling for speculation; wholly immaterial.

A. No.

Q. Have you any data or information in your possession now from which you can determine the value of any composition published by you with respect to the television rights within the next twenty-eight years to come?

A. No, I have not.

Q. Have you any facilities now that would help you to ascertain in which of the establishments in Nebraska your music is being used without the payment of any license fee?

A. No.

Q. Would you have to employ anybody for that purpose if you wanted to obtain that information?

Mr. Nye: Objected to as calling for a conclusion.

A. Yes, we would.

Q. Suppose you wanted to determine what establishments were correctly playing your music copyrighted by [fol. 1160] you and what establishments were infringing on your music, how would you go about it?

Mr. Nye: Objected to as calling for a conclusion.

A. I would have to employ people and send them all over the State of Nebraska.

Q. Would you have to employ a lawyer to bring suits for infringement where there were infringements?

Mr. Nye: Objected to as calling for speculation.

A. Yes.

Q. Would the people that you would employ for the detecting of infringement have to be skilled in music?

A. They would have to be experienced in our business.

Q. Are you familiar with salaries paid to people who are skilled in music?

A. In what vocation, what type of work?

Q. For the purpose of investigating?

A. No. I assume any men in that field would be all right.

Mr. Nye: I move to strike out the answer except the word "No".

Q. You said you would have to have a staff of people in Nebraska. Does it mean that you would have to have an office there?

[fol. 1161] Mr. Nye: Objected to as calling for a conclusion.

A. Yes.

Q. Can you give me an estimate of what it would cost to employ a staff of clerical help and attorneys to protect your rights within that State?

Mr. Nye: I object to the question; no foundation laid for the witness's knowledge; also calling for a conclusion.

A. I could not determine what the lawyers' fees would be, but we would undoubtedly have to spend a substantial amount of money, a great deal more than we could afford, for that service.

Mr. Nye: I move to strike out the answer as not responsive.

Q. Can you give us an idea in dollars and cents?

A. We will estimate that we would put on one man in charge at \$5,000 a year, —

Mr. Nye: I move to strike out the answer.

A. (continued) —and clerical help.

Mr. Nye: I move to strike out the answer; assumes facts not in evidence; it being clear that the witness is speculating and is not expressing an opinion on any reasonable foundation therefor.

[fol. 1162] Q. Would you have to engage an office down there?

Mr. Nye: Objected to as calling for a conclusion.

A. Yes, we would have to open quarters there.

Q. Would you have to put some men there?

A. Yes.

Q. Would you have to pay rent?

A. Yes.

Q. Would you have to pay the salary of the man in charge?

A. Yes.

Q. How much do you think you would have to pay?

Mr. Nye: I object to the question as calling for the expression of opinion without proper foundation.

A. Based on present salaries paid men doing the same type of work for the Society, I assume at least \$5,000.

Q. Your firm has had experience over the past twenty years with attorneys in New York in trying infringement cases on copyright work?

A. Yes.

Q. You are familiar with the fees paid those attorneys?

A. Since I have been in the business.

Q. For ten years?

[fol. 1163] A. Yes.

Q. What would it cost you to employ a lawyer skilled in copyright law to bring infringement suits down there?

Mr. Nye: Objected to as calling for a conclusion; no foundation being laid for the witness's knowledge.

A. I don't know the lawyers in Nebraska very well. It is pretty hard to give you a figure down there.

Q. If you were to determine and fix the price to be charged for the use or rendition of your copyrighted musical compositions within the State of Nebraska, at the time copies of your compositions were first sold in that State, would you be able at this time to fix in advance a price ade-

quate and fair to you and to the user for the full period of the copyright?

Mr. Nye: Objected to as calling for a conclusion; speculation; no foundation having been laid.

A. I don't think we could do it.

Mr. Nye: I move to strike out the answer for the reason that it is clearly based on speculation and not on knowledge.

Q. Could you determine at the time that you first sold a copy of a composition in the State of Nebraska what the [fol. 1164] vogue and popularity of that number would be in the future?

Mr. Nye: Objected to as calling for a conclusion.

A. No.

Q. Does it take a considerable period of time to find out whether a composition has any popularity or becomes valuable to the user?

A. A composition can become popular, depending on the nature of the composition, in a few months or a few weeks in some cases, but as to the value for the future that as very difficult to determine, as to whether it will have any lasting value.

Q. Would the size of the establishment in which your composition is to be played in the State of Nebraska have anything to do with the price to be charged for the public performance for profit of your composition?

Mr. Nye: Objected to as calling for a conclusion.

A. Yes.

Q. Would the size of the audience reached have something to do with it?

A. Yes.

Q. Would the extent of the use have something to do [fol. 1165] with it?

A. Yes.

Q. Would the nature of the establishment have something to do with it?

A. Yes.

Q. Would the profits made by the establishment have something to do with it?

A. Yes.

Mr. Nye: I object to all these questions as extremely leading.

Q. Would these factors that I have just mentioned vary from week to week?

Mr. Nye: Objected to as calling for a conclusion and speculation.

A. Yes.

Mr. Nye: And leading.

Q. Do your companies participate in the royalties paid by the Society each year?

A. Yes.

Q. What royalties did they receive from the Society in the year 1935?

A. Just a moment. M. Witmark & Sons, \$30,716; Remick, \$67,108; Harms, \$94,615.

Q. What moneys did they receive in 1936?

[fol. 1166] A. Witmark, \$42,275; Remick, \$35,008; Harms, \$50,545.

Q. What moneys did they receive in 1937?

A. Witmark, \$89,843; Remick, \$75,413; Harms, \$137,358.

Q. Do you consider your contracts between Harms, Remick and Witmark and the Society valuable to you?

Mr. Nye: Objected to as calling for opinion.

A. Yes, we do.

Q. What do you value those contracts at in dollars and cents?

Mr. Nye: Objected to as calling for a conclusion and speculation, without foundation.

A. Just how do you mean?

Q. In dollars and cents; what are your contracts worth, with the Society?

A. A great deal, an immense amount; I can't give you an exact figure; it would be speculation.

Q. Are they important to your business?

Mr. Nye: Same objection.

A. They are the life of our business.

Q. Without those contracts could your company stay in business?

Mr. Nye: Same objection.

A. It would be the difference between staying in business [fol. 1167] and going out of business.

Q. Are those contracts the chief source of your revenue today?

A. Yes.

Q. Are you willing to have those contracts with the Society declared invalid?

Mr. Nye: Objected to as calling for a conclusion; immaterial.

A. No.

Q. Does Harms, Inc. publish a catalogue of its compositions?

A. Yes, we do.

Q. Have you brought such a catalogue with you?

A. No, I have not.

Q. Does Witmark publish a catalogue?

A. Yes, all these companies have catalogues.

Q. You haven't got them with you?

A. No.

Q. When did Harms become a member of the Society, do you know?

A. In 1914.

Q. When did Witmark become a member?

A. 1914.

Q. When did Remick become a member?

[fol. 1168] A. I am not certain of that date; I think it was the same.

Q. Do you know of your own knowledge prior to 1914 if either of those companies ever received from any source whatever any moneys for public performance for profit of the compositions published by them?

A. No, they did not.

Mr. Frohlich: Your witness.

Cross-examination.

By Mr. Bennett:

Q. Mr. Morris, I think you said you were a director of the American Society of Composers, Authors and Publishers?

A. That is right.

Q. Are you a member of any of the committees of the Society?

A. No, I am not.

Q. How long have you been a director?

A. About five years.

Q. I notice in giving the income you received from the Society in 1935, 1936 and 1937, there is a very marked discrepancy between the figures of 1935 and 1936. Can you explain the reason for that?

A. Our companies withdrew from ASCAP at the end of 1935 in an effort to set up our own performing rights bureau.

Q. When you say "our companies" you mean Witmark, [fol. 1169] Remick and Harms?

A. Yes.

Q. Who owns those companies?

A. Warner Brothers Pictures.

Q. What other companies does Warner Brothers own?

A. We have some other companies that are subsidiaries, such as New World, T. B. Harms, Shubert—that is about all I think of.

Q. Were those companies all members of ASCAP prior to January 1, 1936?

A. Yes.

Q. Did they withdraw from ASCAP?

A. Yes.

Q. Do you know the total amount of money paid to all of the Warner companies, the Warner owned companies, by ASCAP during 1935?

A. Approximately \$300,000.

Q. When did you give notice that you were going to withdraw from ASCAP?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. Probably in November of that year; I didn't handle it so I can't give you definite dates on that.

Q. Did you have anything to do with the other Warner- [fol. 1170] owned companies other than those three other subsidiaries?

A. Yes.

Q. You handled those along with Witmark, Remick and Harms?

A. Yes.

Q. What are your duties as Vice-President?

A. Selection of songs for publication, contact between the New York office and the studio and the engaging of writers, and the general overseeing of what we call the professional department, people to exploit the songs and the sales, and of course my duties as ASCAP as director.

Q. You said that part of your duties are sales?

A. That is right.

Q. Will you state approximately the gross amount of sheet music sales by Warner Bros. subsidiaries for the first six months of 1935?

A. I don't have those figures.

Q. Can you approximate it?

A. No, I couldn't even hazard a guess.

Q. Can I refresh your recollection?

A. You may.

Q. Suppose I tell you that your first six months sales were \$585,000 for 1935?

Mr. Finkelstein: I object to the entire testimony as [fol. 1171] being incompetent, irrelevant and immaterial, not within the issues.

A. I just couldn't tell whether that figure is anywhere near the right amount at that time.

Q. You are in charge of sales?

A. No, general supervision. Our sales are broken down in accordance with types of merchandise.

Q. Can you state approximately what your sheet music amounted to for any of the companies, either Witmark, Harms or Remick?

A. For each period?

Q. Yes.

A. No, I could not.

Q. Can you state the amount of your sheet music sales for the first six months of 1936, for those companies?

Mr. Finkelstein: Same objection.

A. For 1936? No.

Q. Can I refresh your recollection on that?

A. Yes.

Q. If I told you it was \$140,000 approximately, does that help you?

A. No.

Q. Don't you know as a matter of fact that your sheet music sales in the first six months of 1936 materially decreased?

A. Yes.

Q. Don't you know approximately how much that decrease was?

A. No.

Q. You don't know that it was 75 or 50 per cent of what it was the preceding year?

Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial; the witness has already answered and said he does not know.

A. No, I do not.

Q. Your records will show that, will they not?

A. Yes.

Q. Your records will show the amount of sheet music sales?

A. Yes.

Q. Can you ascertain that figure by calling your book-keeping department or whatever department has charge of your records?

A. Yes, I believe I could.

Q. Will you do that?

A. Yes. Do you want me to get it afterwards or now?

(Discussion off the record.)

Q. Mr. Morris, on January 1, 1936, what did the music companies that you represent do with respect to selling licenses for public performance for profit of their copyrighted works?

A. I can't give you much information there because I did not handle it and had nothing to do with it.

Q. You don't know?

A. I have a very vague idea.

Q. You don't know how many licenses were issued for the Warner Bros. music companies?

A. No, I do not.

Q. Do you know the amount of license fees?

A. That we collected?

Q. That you collected?

A. No, I couldn't tell you that.

Q. Prior to the withdrawing from the Society you made surveys, did you not, to determine the ratio of the perform-

ances of Warner compositions with respect to the entire ASCAP catalogue?

A. Yes, that was done.

Q. Will you state approximately the ratio between Warner Brothers companies' performances and ASCAP as a whole?

A. I believe there were around 20 or 22 per cent.

Q. Are you talking about performance or the ratio of [fol. 1174] income received by the Warner group from ASCAP?

A. The performance as I remember it.

Q. Don't you know that checks made at that time showed between 30 and 40 per cent?

A. No, I do not.

Q. When did Warner Brothers subsidiaries return to ASCAP, re-enter as members?

A. July of 1936.

Q. Why?

Mr. Finkelstein: Objected to as calling for speculation; hypothetical; incompetent, irrelevant and immaterial to the issues.

Mr. Bennett: The witness is an official of the companies and has testified that he handled various phases and supervised various phases of the business; that he is a director of ASCAP, has been for the last five years, and it must be within his knowledge as to why they returned to the Society.

A. Mr. Warner made that decision. He decided that the method that we had undertaken was not practical or good business.

Q. What do you mean by "good business"?

A. The fact that he could not make it a paying proposition.

[fol. 1175] Q. You mean you couldn't make it a paying proposition as a non-member of ASCAP?

A. I don't believe that entered into it, as I remember; simply that the expense of contacting licensees and the local expenses that were incurred because of the infringements made it physically and financially almost impossible.

Q. What was the ratio of performances of Warner copyrighted music during the first six months of 1936 as compared with prior years?

A. During the period that we had withdrawn from the Society?

A. Q. Yes.

A. Very small, I think. I don't know what it was.

Q. To what do you attribute the smallness, when you say it was used from 20 to 22 per cent prior to January 1, 1936?

Mr. Finkelstein: Objected to as hypothetical and speculative; no proper foundation; incompetent, irrelevant and immaterial.

A. The terms that were asked were not agreeable to the radio people.

Q. You mean by that you could not sell licenses to perform, is that it?

A. Not at the fees we were asking.

Q. Do you know what fees you were asking?

[fol. 1176] A. No, that I am not familiar with, although in general I know we wanted considerably more money than we had been getting.

Q. Will you state whether ASCAP commencing January 1, 1936, reduced its license fees to licensees in proportion to the amount of copyrights withdrawn by Warner Bros. when they left the Society?

Mr. Finkelstein: I objected to the question on the ground that it is incompetent, irrelevant and immaterial, on the ground that this man was not connected with the Society in January 1936 and there is nothing to show that he has any knowledge of what ASCAP did in that respect, and no proper foundation.

Mr. Bennett: He was a director at the time.

A. There has been so much talk back and forth, that I want to get it straight. I was not a director in January 1936.

Q. You were in December 31, 1935?

A. No, not during the last two months; I had been replaced by Mr. Herman Starr.

Q. Do you know whether the fees of ASCAP to the licensees were reduced by reason of the loss of the Warner copyrights?

[fol. 1177] A. I don't know what they did.

Q. You really don't know?

A. No.

Q. Don't you know as a fact that ASCAP refused to reduce the fees?

Mr. Finkelstein: I object to that on the ground it has already been answered, and on all the other grounds heretofore stated.

A. No, I do not.

Q. Have you gained that knowledge since you again became a director of ASCAP?

A. There has never been any discussion on the point.

Q. Please answer yes or no. Have you gained that knowledge?

A. No.

Q. You never heard that ASCAP refused to reduce its fees to compensate for the loss of the Warner copyrights to its licensees?

A. No.

Q. Approximately how many copyrights are owned by each one of the Warner subsidiaries, owned by you?

A. Each one or the total?

Q. You may give the total for the whole group, if you wish.

[fol. 1178] A. I would say more than six thousand; how many more than that I don't know; I don't know the exact amount.

Q. Mr. Morris, do you know of any publishers regularly engaged in the music publishing business who are not members of ASCAP?

A. I know of one or two publishers that handle catalogues. I do not consider them in the publishing business of the same nature that we are.

Q. Do you know of any reputable publishers that are not members of ASCAP?

A. No, I do not.

Q. Would you say then that substantially all of the publishers regularly engaged in sheet music publication and sales are members of ASCAP?

A. I believe so.

Q. Do you know whether the publishers regularly maintain lists of their copyrighted compositions similar to the catalogues that you have?

A. No, I don't believe they do.

Q. Is it the practice of most of them to maintain such catalogues?

A. I don't believe so.

Q. Are your catalogues complete; that is, do they contain all of the copyrights which are owned by the respective [fol. 1179] companies?

A. I believe so.

Q. Now, in connection with your sales of sheet music, referring back to that fact a moment, do you compete with other publishers in exploiting and selling your sheet music?

A. No.

Q. Why do you say you do not compete?

A. Well, we are dealing with copyrights and we are the only ones having that particular song, that composition.

Q. Do you maintain a staff for the purpose of exploiting?

A. Yes.

Q. If you did not exploit by plugging, as it is called, what would happen to your compositions?

Mr. Finkelstein: Objected to as speculation.

A. I don't know; I have never tried.

Q. Why do you do it?

A. Because I believe it is a proper method of conducting our business.

Q. Isn't it a basis for advertising your wares?

A. It is a basis of selling.

Q. If there is no competition then you don't need to exercise any ingenuity for selling?

[fol. 1180] A. How can we bring it to public attention if we do not take it around and show it?

Q. Q. Surely, unless you are competing with one of the others or many of the other publishers the public would come to you?

Mr. Finkelstein: Objected to as improper in form, arguing with the witness; speculation.

A. I don't believe so.

Q. Then as a matter of fact you are competing with the other publishers of sheet music?

Mr. Finkelstein: Same objection.

A. No, I don't believe that.

Q. Mr. Morris, as director of the sales isn't it your duty to see that the purchaser of music purchases copyrighted compositions owned by your companies in preference to buying compositions of some other publishers?

A. No, that has no function with selling; that is no part

of the duty of the sales manager or anyone directing sales. We are selling "Vini Vini", and some one else is selling "Love Walked In". The public can buy them both so far as we are concerned. We don't care. Because we are the only publishers of "Vini Vini".

Q. But you make an effort to have "Vini Vini" put on the program to the exclusion of some other composition [fol. 1181] owned by someone else, isn't that true?

A. We don't work on that basis. We simply try to get our number on. We want our number heard.

Q. If your number is on, then that excludes necessarily someone else's number at that particular time?

Mr. Finkelstein: Objected to as argumentative, hypothetical, speculative.

A. An orchestra leader can only play so many numbers on a program.

Q. Who fixes the price at which the performance rights for the copyrighted compositions owned by your companies are made available to users of music?

A. The administrative committee, I believe, of the Society. You are talking about performance rights, public performance rights?

Q. That is right. You are talking about the American Society of Composers, Authors and Publishers?

A. That is right.

Q. From your experience as a music publisher and as a member and director of the American Society, will you state whether it is not a fact that approximately ninety per cent of the usable music, commercially usable music, is copyrighted and covered by the Society's license?

Mr. Finkelstein: Objected to; no proper foundation; nothing [fol. 1182] shown that the witness knows anything about it; has not been qualified; and incompetent, irrelevant and immaterial to the issues.

A. There are many compositions that are not the property of the American Society, such as Associated Publishers and people like that.

Q. That doesn't answer the question. (The pending question was read by the stenographer.) I will say, commercially usable music for public performance for profit.

A. I am not an expert on that; I can't answer that.

Q. You testified that all of the reputable musical pub-

lishers regularly engaged in the music business are members of the Society. Who as a practice owns the copyrights of musical compositions?

A. The publisher.

Q. Does that help you to answer the question propounded?

Mr. Finkelstein: Same objection.

A. I understand what you want. The only thing is, there are many compositions throughout the country by different people that I don't know anything about.

Q. I am talking about commercially usable copyrighted music.

A. That is what makes it difficult; I don't know.

[fol. 1183] Mr. Finkelstein: I object to the form of the question, misleading.

Q. Let me state it this way, then. What percentage of the copyrighted music comes under the ASCAP license today? When I say today I mean at the present time.

A. Copyrighted music?

Q. Yes.

A. I haven't the faintest idea.

Q. What would be your best opinion?

Mr. Finkelstein: I object to the question as calling for speculation, hypothetical, witness has already answered it; incompetent, irrelevant and immaterial.

A. I can't give you any more information; I don't know.

Q. Would you say that there was 90 per cent, or that that is too much or too little.

Mr. Finkelstein: Same objection, and on the further ground that counsel is attempting to compel the witness to answer something that he has already answered.

A. I couldn't fix it, Mr. Bennett.

Q. What percentage do the catalogues of your particular companies bear to the whole of ASCAP music?

A. That I don't know. The total number of copyrights?
[fol. 1184] Q. Approximately.

A. I haven't any idea.

Q. As a director of ASCAP you know the method by which royalties are divided amongst the members?

A. Yes.

Q. Is it not a fact that one of the things taken into consideration in the distribution of the royalties is the number of copyrights?

A. Yes, that is true.

Q. In respect to the income, then, the ratio of the amount received by you and the other members of ASCAP, what would you say that the total of your copyrights bears to the total? You must have that knowledge.

Mr. Finkelstein: No foundation laid for the question; incompetent, irrelevant and immaterial.

A. I can't measure the copyrights that way.

Q. Would you say it was ten per cent?

A. I couldn't say.

Q. Fifteen?

A. I haven't the slightest idea.

Mr. Finkelstein: Same objection.

Q. Mr. Morris, who receives the highest amount from ASCAP of any of the publishing companies?

[fol. 1185] Mr. Finkelstein: Objected to as incompetent, irrelevant and immaterial.

A. I believe Harms, Inc.

Q. Do you know who receives the second highest?

Mr. Finkelstein: Same objection.

A. No, I don't know.

Mr. Bennett: That is all.

Q. Mr. Morris, have you received and do you now know the gross amount of sheet music in dollars sold by the Warner music subsidiaries during the first six months of 1935?

A. Yes.

Q. Will you state the amount?

A. \$696,782.90.

Q. Do you know the gross amount sold by the same companies for the last six months of 1935?

A. \$715,000.

Q. Now, will you state the gross amount of sheet music sales by those companies for the first six months of 1936, when the companies were not members of the American Society of Composers, Authors and Publishers?

A. \$229,000 even.

Q. Will you state the date on which the companies re-[fol. 1186] turned to membership in the Society?

A. July, 1936.

Q. Will you state the gross amount of sheet music sales for the last six months of 1936, during which period the companies were again members of the Society?

A. \$616,000.

Mr. Bennett: That is all.

[fol. 1187] (Deposition of Ella Herbert Bartlett)

Buck v. Swanson.

1450 Broadway, New York, N. Y.,
May 25, 1938, 10 a. m.

Met pursuant to adjournment.

Appearance: as before.

ELLA HERBERT BARTLETT, called as a witness on behalf of the plaintiffs, having been first duly sworn, did depose and say:

Direct examination.

By Mr. Frohlich:

Q. What is your full name and address?

A. Ella Herbert Bartlett, 116 East 68th Street, New York City.

Q. Mrs. Bartlett, are you the daughter of the late Victor Herbert?

A. I am.

Q. Have you any brothers or sisters?

A. I have a brother.

Q. What is his name?

A. Clifford Herbert.

[fol. 1188] Q. You and Clifford were the only children of Victor Herbert?

A. Yes, the only living ones.

Q. What was your father's occupation in his life time?

A. Composer, or shall I say musician.

Q. Is that everything that he did?

A. Composer, conductor; I suppose that about covers it.

Q. Did he follow the profession of composing music for many years?

A. Yes.

Q. Are you able to tell us, without looking at any list or document and without refreshing your recollection from any such list, the important works that your father composed?

A. The important operetta, do you mean?

Q. Yes.

A. "M'lle Modiste," "Red Mill", "Naughty Marietta," "Babes in Toyland," I am trying to remember—

Q. Would your recollection be refreshed if I show you a list of these works which appeared in your affidavit which you made in this case?

A. Yes.

Q. Will you look at this list (handing paper to the witness)?

[fol. 1189] A. Do you want the biggest ones?

Q. You may just look at this list.

A. "M'lle Modiste," "Naughty Marietta," "The Century Girl," "Old Dutch," "The Cinderella Man," "Prince Ananias," "The Wizard of the Nile," "Serenade," "Idol's Eye," "Cyrano de Bergerac," "The Answer," "Singing Girl," "Viceroy," "Dolly Dollars," "Babette," "Tattooed Man," "Wonderland," "It Happened in Nordland," "Song Birds," "Camille," "Prima Donna," "Red Mill," "Sweet Sixteen," "The Duchess," "Only Girl," "Princess Pat," "Enchantress," "Lady of the Slipper," "Velvet Lady," "Eileen," "The Debutante," "The Madcap Duchess," "Madeleine," "Natoma," "Sweethearts," "My Golden Girl," "Girl In The Spotlight," "Orange Blossom," "Dream Girl," "Angel Face," "Her Regiment," "Oui Madame,"

Q. Can you name a few of the shorter compositions that your father composed, or would it help you to refresh your recollection if I show you this list which I have?

A. It helps me. I know some of them.

Q. Will you please look at this list (handing paper to the witness)?

A. These are largely orchestral things, piano pieces and things of that kind: "The Whiteman Suite," "Suite Romantique," and "Suite Columbus." And then little in-

dividual numbers: "Fluerette," "Souvenir," "Sunset," "Devotion," "Dream On," "McKinley March," "22nd [fol. 1190] Regiment March," "The Irish Rhapsody," "Al Fresco," "Heart Throbs," "The Belle of Pittsburgh," "Badinage," "Indian Summer," "Pan Americana," "Yesterthoughts," "American Fantasie," "Valse a la Mode," "American Rose Waltz," "Christ is Risen," "Air de Ballet," "Woodland Fancies," "Punchinello," "Star Light Waltz," and "Forebodings." Of course, those are not complete.

Q. This is just a partial list of the works composed by your father?

A. Yes.

Q. Did these compositions which you have just mentioned, that is to say, the light operas, and operettas and musical comedies in the first group, and the shorter pieces in the second group, attain popularity and celebrity in their day?

A. Yes.

Q. Were they well known to the public?

A. Yes.

Q. Were any of these operettas that you mentioned in the first group successful operettas?

A. Yes, I would say most of them.

Q. Were they successful both financially and artistically?

A. Yes.

[fol. 1191] Q. Have you ever been in the State of Nebraska yourself?

A. No. I have been to California. Do you go through there then?

Q. No. Now, from time to time as your father composed these compositions and short compositions that you have mentioned, did he enter into contractual relations with music publishers for the publication of the sheet music of the compositions and of the scores of these operettas and musical comedies?

A. Yes.

Mr. Frohlich: We will offer in evidence as Plaintiff's Exhibit 19, an agreement between Victor Herbert and M. Witmark & Sons, dated June 8, 1910; a copy of which is annexed as Schedule VI to the affidavit of Ella Herbert Bartlett verified June 8, 1937, and submitted in support of the motion for temporary injunction.

Exhibit 20 is an agreement between Victor Herbert and M. Witmark & Sons dated April 2, 1914, a copy of which appears as Schedule VII annexed to said affidavit of Ella Herbert Bartlett.

Mr. Nye: We object to the two exhibits as immaterial. [fol. 1192] Mr. Frohlich: Will you stipulate that copies of the two contracts just described and offered in evidence, which appear as Schedules VI and VII to said affidavit, are true and accurate copies of the original contracts? I make the statement that they are.

Mr. Nye: We so stipulate.

(The copies of the two contracts just offered in evidence as Plaintiffs' Exhibit No. 19 and Plaintiffs' Exhibit No. 20, were marked accordingly.)

Mr. Frohlich: It is stipulated that the following contracts are original contracts, objection as to foundation waived:

Plaintiffs' Exhibit 21-A. Agreement between Victor Herbert and M. Witmark & Sons, dated September 6, 1898, with respect to the comic opera "Fortune Teller."

Plaintiffs' Exhibit 21-B. Agreement dated April 9, 1905, between Victor Herbert and M. Witmark & Sons, relating to musical and dramatic composition entitled "Mlle Modiste."

Plaintiffs' Exhibit 21-C. Agreement dated October 23, [fol. 1193] 1906, between Victor Herbert and M. Witmark & Sons, relating to the musical play entitled, "The Red Mill."

Plaintiffs' Exhibit 21-D. Agreement dated March 27, 1903, between Victor Herbert and M. Witmark & Sons, relating to the musical and dramatic composition entitled "Babes In The Woods."

Plaintiffs' Exhibit 21-E. Agreement dated the 16th day of —, 1919, between Victor Herbert and T. B. Harms and Francis, Day & Hunter, relating to the musical composition tentatively entitled "Little Miss Wise."

Mr. Frohlich: I offer in evidence these five contracts just described as Plaintiffs' Exhibits 21-A to 21-E inclusive.

Mr. Nye: Objected to as to materiality.

(Copies of the documents just offered in evidence as Plaintiffs' Exhibit No. 21-A to Plaintiffs' Exhibit No. 21-E, consisting of five documents, were marked accordingly.)

Q. These seven contracts that have just been received or marked in evidence as Plaintiffs' Exhibits 19, 20, 21-A to 21-E, do they represent typical contracts that were made [fol. 1194] from time to time between your father and his various publishers?

A. Yes.

Q. You are familiar with the terms of all of these contracts, all of your father's contracts?

A. I am familiar with them.

Q. "The Red Mill" was a musical comedy, wasn't it?

A. Yes.

Q. And had a long and extended run?

A. Yes.

Q. This contract, Plaintiffs' Exhibit 21-E, which refers to "Little Miss Wise," was that a tentative title?

A. Yes.

Q. Was the play produced under this contract later?

A. Yes.

Q. What was the new title?

A. "Angel Face."

Q. This contract, Plaintiffs' Exhibit 21-D, which refers to "Babes In the Woods,"—was that a tentative title?

A. Yes.

Q. Was that title later changed?

A. Yes.

Q. What was the new title?

[fol. 1195] A. "Babes in Toyland."

Q. This play, "The Red Mill," that consisted of many musical parts, didn't it?

A. Yes.

Q. There were opening numbers and opening choruses and finales and ensemble numbers throughout the play, isn't that so?

A. Yes.

Q. That division into smaller musical units is true as to every one of the musical operettas and musical comedies that your father wrote?

A. Yes.

Q. Do you know approximately how many copyrights of separate musical compositions were obtained on the "Red Mill"?

A. That one operetta alone?

Q. That one operetta alone.

A. I don't know. Offhand I would say about thirty, something like that.

Q. Would it refresh your recollection if I show you this list which you had attached to your affidavit in this proceeding?

A. Yes.

Q. Will you look at this list, Schedule I, and see if that [fol. 1196] will refresh your recollection? (Paper handed to the witness.)

A. Yes. These are all the different arrangements, too; that is the reason I didn't know; here are six arrangements for the same number.

Q. This list contains all of the copyrights obtained on the operetta "The Red Mill"?

A. Yes.

Q. Does the list include various arrangements of the same composition?

A. Yes.

Mr. Frohlich: I offer in evidence this schedule I attached to Mrs. Bartlett's affidavit in the same proceeding, being a list of all of the copyrights that were obtained on the separate compositions including all of the arrangements of those compositions from time to time on the play, "The Red Mill," deemed marked Plaintiffs' Exhibit No. 22.

Mr. Nye: To which offer it is objected as immaterial. We waive foundation.

(The paper just offered in evidence was deemed marked Plaintiffs' Exhibit No. 22, of this date.)

[fol. 1197] Q. I call your attention to the operetta "Naughty Marietta," and ask you whether that was a very successful and well known operetta of your father's?

A. Yes, very.

Q. Would your recollection be refreshed if I show you Schedule II attached to your affidavit in this proceeding, with respect to the number of copyrights that were obtained on the separate musical numbers in that play (handing paper to the witness)?

A. Yes.

Q. Does that schedule truly represent the copyrights of the various compositions and of their various arrangements?

A. Yes.

Mr. Frohlich: I will offer it in evidence and ask that it be deemed marked in evidence, This Schedule II attached to Mrs. Bartlett's affidavit, being the list of all of the copyrights obtained from time to time on the various numbers contained in "Naughty Marietta"; to be deemed marked Plaintiff's Exhibit No. 23.

Mr. Nye: Defendants waive foundation, and object to the offer as immaterial.

(The paper just offered in evidence was deemed marked Plaintiffs' Exhibit No. 23, of this date.)

[fol. 1198] Q. Was "Mademoiselle Modiste" a well known play or musical comedy composed by your father?

A. Yes.

Q. Did that likewise contain separate musical compositions?

A. Yes.

Q. Were various arrangements made from time to time of a number of those compositions?

A. Yes.

Q. Would your recollection be refreshed if I were to show you this document purporting to contain a list of the various arrangements which were copyrighted from time to time, being Schedule III attached to your affidavit in this proceeding?

A. Yes.

Q. Will you please look at this list, Mrs. Bartlett (handing paper to the witness)?

A. Yes.

Q. Does that schedule truly represent the copyrights of the various compositions and of their various arrangements?

A. Yes.

Mr. Frohlich: I will offer in evidence this schedule III and ask that it be read in evidence and deemed marked in [fol. 1199] evidence as Plaintiffs' Exhibit No. 23. The document offered in evidence is Schedule II attached to Mrs. Bartlett's affidavit on the motion for temporary injunction, being a list of the copyrights and of the various compositions and of the arrangements of a number of those compositions that were contained in the play "Mlle Modiste".

(The document just offered in evidence was deemed marked Plaintiffs' Exhibit No. 24, of this date.)

Mr. Nye: Defendants waive foundation; and object to the offer as immaterial.

Q. "M'lle Modiste" was originally copyrighted, according to Schedule III, in October, 1905; in that correct?

A. Yes.

Q. Were there from time to time renewals of various copyrights of the musical numbers contained in "M'lle Modiste"?

A. Yes, they have all been renewed.

Q. All the compositions of "M'lle Modiste"?

A. Yes.

Q. With the possible exception of some of the later arrangements that have not yet expired?

[fol. 1200] A. Yes.

Q. I show you a list purporting to be the renewals of the copyrights of a number of compositions of "M'lle Modiste", and I ask you if it refreshes your recollection and whether you can testify from your own recollection after looking at this list whether these renewals are accurate (handing paper to the witness).

A. I would say so.

Mr. Frohlich: I will offer in evidence the document entitled "Renewals of Copyrights—M'lle Modiste", consisting of two pages annexed to Mrs. Bartlett's affidavit in that same proceeding, to be deemed marked Plaintiffs' Exhibit No. 25.

Mr. Nye: Foundation waived; we object to the offer as immaterial.

Q. I show you this document entitled "Schedule IV Red Mill," and ask you whether you can testify, looking at this document, whether or not this represents a true and correct statement of original copyrights and renewals of the musical compositions in the "Red Mill" (handing paper to the witness).

A. Yes.

Mr. Frohlich: I offer in evidence this document entitled [fol. 1201] "Schedule IV Red Mill" "Original copyrights issued to M. Witmark & Sons as trustees for Victor Herbert and Henry Blossom Jr., renewals issued to Ella H. Bartlett, Clifford Herbert and Marjorie Wilson." which is attached to Mrs. Bartlett's affidavit in the same proceeding.

Mr. Nye: Foundation waived; we object to the offer as immaterial.

(The document just offered in evidence was deemed marked Plaintiffs' Exhibit No. 26, of this date.)

Q. Who is Marjorie Wilson, Mrs. Bartlett?

A. She is the widow of the author.

Q. Who is Henry Blossom, Jr.? He wrote the lyrics, I believe?

A. Yes.

Q. I show you this list, which is entitled "Schedule V. Babes In Toyland. Original copyrights issued to M. Witmark & Sons as trustees for Victor Herbert and Glen McDonough," and ask you whether that truly represents the list of copyrights and renewals of copyrights of the musical compositions in "Babes In Toyland"? (Paper handed to the witness.)

A. I would say yes.

[fol. 1202] Mr. Frohlich: I will offer in evidence this schedule "V" annexed to Mrs. Bartlett's affidavit in the same proceeding.

Mr. Nye: Foundation waived; we object to the offer as immaterial.

(The paper just offered in evidence was deemed marked Plaintiffs' Exhibit No. 27, of this date.)

Q. Was your father in his life time a member of the American Society of Composers, Authors and Publishers?

A. Yes.

Q. When did he join the Society, if you know?

A. I am afraid I don't know the date.

Q. Can you tell us approximately the year?

A. No.

Q. What year did your father die?

A. He died in 1924.

Q. After his death did you and your brother Clifford join the American Society of Composers, Authors and Publishers?

A. Yes.

Q. Have you been members of that Society ever since?

A. Yes.

Q. Have you been in receipt of any compensation for

[fol. 1203] public performance for profit of your father's compositions since his death?

A. Yes.

Q. From whom have you received any such compensation?

A. From the American Society.

Q. What compensation did you receive from the Society in the year 1935? Just give us the approximate figures.

A. \$10,000.

Q. Was that money paid to you alone, or to you and your brother?

A. I would say that was about my share; I can't give it exactly.

Q. Your brother also received some compensation from the Society?

A. Yes.

Q. Did you and your brother inherit under the will of your father the various copyrights of the compositions that he had composed in his life time?

A. He left the copyrights to my mother and to me and gave none to my brother.

Q. When did your mother die?

A. In 1927.

Q. Did you inherit from your mother the copyrights that had been left to her?

[fol. 1204] A. No, she left them to my brother.

Q. Did you inherit any of them at all?

A. I had two-thirds. Father left me two-thirds of his copyrights in the will, and to mother one-third. Mother in turn left her share to my brother.

Q. So that Clifford owned one-third and you two-thirds?

A. Yes.

Q. From time to time these copyrights were renewed. In whose name were they renewed?

A. As they were renewed they were all renewed in my brother's and my names.

Q. After they were renewed did you continue to have contractual relations with various publishers to publish the musical compositions of your father?

A. Yes.

Q. Are they now being published under those arrangements?

A. Yes.

Q. Did you within recent years sell any rights in any of your father's plays, for motion pictures?

A. Yes.

Q. Will you please state what works you sold for that purpose?

A. "Babes In Toyland," "M'lle Modiste" and "The Red [fol. 1205] Mill," and "Naughty Marietta."

Q. To whom were the grand rights in "Babes In Toyland" sold?

A. We sold those to R. K. O.

Q. What did you receive as compensation for the sale of those rights?

A. \$50,000, for a lease of ten or eleven years; I don't remember exactly.

Q. To whom did you sell the grand rights in "M'lle Modiste"?

A. To Warner Brothers.

Q. What did you receive for them?

A. \$50,000, as I remember.

Q. What other plays do you remember that were sold?

A. "The Fortune Teller."

Q. To whom did you sell that?

A. To Warner Brothers.

Q. What did you get for that?

A. \$25,000 for the music alone, because they owned the book.

Q. What was the other play?

A. "The Red Mill."

Q. To whom did you sell that?

A. That was sold to Hearst; I think that was Cosmopolitan Productions at that time.

[fol. 1206] Q. What did you get for that?

A. As I remember that, it was \$50,000 on a ten-year lease.

Q. Did you sell any other plays?

A. Yes.

Q. Any to Metro-Goldwyn-Mayer?

A. Yes.

Q. What did you sell?

A. "Sweethearts."

Q. What did you get for that?

A. \$50,000.

Q. Did you sell any others?

A. "Rose of Algeria."

Q. What did you get for that?

A. The same.

Q. \$50,000?

A. Yes. And "The Red Mill."

Q. What did you get for the "Red Mill"?

A. \$50,000.

Q. To whom did you sell "Naughty Marietta"?

A. Metro-Goldwyn-Mayer.

Q. What did you get for that?

A. \$50,000. They had some sort of claim on the book, so that was the reason it was a little bit less; they had some arrangement with the author.

[fol. 1207] Q. In all of those instances where you sold these rights, were they for a limited period?

A. They all were, with the exception of three.

Q. What was the limitation?

A. They were sold on the basis of ten or eleven years, rights for ten or eleven years.

Q. When you sold these rights, just what rights did you sell?

A. The rights to make a picture, a moving picture.

Q. A moving picture of the particular play?

A. Yes.

Q. In any of those instances where you have rights to make picture versions of the play, you didn't sell the right of publication?

A. No.

Q. That has been reserved to your publisher?

A. Yes. Only the rights to make motion pictures using the book, lyric and music.

Q. From time to time have you been in receipt of royalties from the publication of the musical compositions composed by your father?

A. Yes.

Q. Have these royalties been very substantial in recent years?

[fol. 1208] A. Quite.

Q. How much did you receive by way of royalties from the sales of sheet music on all of the plays in the year 1935? Give us an approximate figure; you don't have to give us the exact amount.

A. This is, just sheet music?

Q. Yes.

A. Like my statement from Witmark?

Q. That is right.

A. I would say six or \$7,000 a year on that alone, just sheet music.

Q. Just sheet music from all of the works?

A. Yes; that is approximate.

Q. What did you receive from the same source in 1936?

A. I would say about the same; they didn't change very much.

Q. About the same in 1937?

A. Yes; I think in 1937 they were a little higher.

Q. Did you also receive in 1935 any moneys from your publishers for the mechanical reproduction of your father's works with respect to disk records and piano rolls?

A. Yes.

Q. Can you tell us approximately the aggregate of all of the moneys that you received in the year 1935 from that source?

[fol. 1209] A. I don't believe I can.

Q. Was it more than the sheet music, or less?

A. Less.

Q. Did the same hold true for 1936 and 1937?

A. Yes.

Q. The moneys that you received from sheet music and from mechanicals, was that money that came to you alone?

A. Yes, that is what I had in mind.

Q. Did Clifford Herbert, your brother, also receive moneys from the sale of sheet music and from mechanicals of these compositions in these years?

A. Yes.

Q. You have nothing to do with what he receives?

A. No.

Q. With respect to these motion picture leases which you made on five or six of the works you mentioned, did you retain all of the moneys for yourself?

A. No.

Q. Did Clifford Herbert share in some of these moneys?

A. Yes, he did.

Q. Can you tell us for the record what his share was and what your share was? You have told us he inherited your mother's share.

[fol. 1210] Mr. Hotz: She has told us it was one-third and two-thirds.

A. Up to the time of the renewal; after that time if it has been renewed, then he gets one-half.

Q. What did you receive from the Society in 1936 as your own share?

A. Well, about \$10,000.

Q. What did you receive in 1937?

A. It has gone up a little.

Q. A little more than \$10,000?

A. Yes.

Q. You have a contract; your most recent contract with the Society was made in 1935, wasn't it?

A. Yes.

Q. Do you consider that contract of value to you?

Mr. Nye: I object to that question as calling for a conclusion.

A. Yes.

Q. Would you want that contract declared invalid and unlawful?

Mr. Nye: Objected to as calling for speculation.

A. No.

Q. A great many of your father's compositions will come up for copyright renewal in the next five or six years, [fol. 1211] won't they?

A. Yes.

Q. Are you able to give us an estimate of what you consider the value of these works to you for renewal purposes?

Mr. Nye: I object to the question as calling for pure speculation, no proper foundation having been laid.

A. Taking one operetta as an example, if I sold it for motion pictures and publishing and dramatic rights and everything, I would say at least \$100,000 each.

Q. You have had some experience in selling the rights of your published works, haven't you?

A. Yes.

Q. You have some notion of the value of those rights?

A. Yes.

Q. And you are acquainted with the values of the publication rights of these compositions?

A. Yes.

Q. As well as the values for motion picture rights?

A. Yes.

Q. Based upon your experience with respect to these rights, so far as publication and motion pictures are concerned and the royalties that you have received from the [fol. 1212] sale of those rights from time to time, is it your testimony that each of these operettas or musical comedies has a value of \$100,000 to you with respect to the renewal rights?

Mr. Nye: I object to the question as extremely leading, calling for speculation.

A. Yes; I would say of course some are more valuable than others.

Q. Striking an average?

A. Striking an average, \$100,000.

Q. When you strike an average, do you take into consideration all of these factors, your own experience, the moneys that you have received in the past?

A. Yes.

Q. You testified that from time to time you have received royalties from the sale of mechanical reproductions of your father's musical compositions by reason of phonograph records and piano rolls, is that right?

A. Yes.

Q. After you have received your renewal rights on some of these compositions, has your publisher to your knowledge granted to companies like Victor, Brunswick and other manufacturers of record- and rolls the right to manufacture these compositions in like manner for the renewal [fol. 1213] period?

A. Yes.

Q. Have you been receiving royalties on those rights?

A. Yes.

Q. Have you any control over the sale or disposition of the records and rolls that are sold by the manufacturers of these records and rolls?

Mr. Nye: I object to the question as calling for a conclusion.

A. No.

Q. Are you able to compel any of the manufacturers of these records and rolls to affix to the particular record or roll of your father's composition a price to be charged for the public performance for profit of that record or roll in the State of Nebraska?

Mr. Nye: I object to the question as calling for speculation and conclusion.

A. No.

Q. Would you be willing to permit the manufacturers of the rolls and records of your father's compositions to affix on such record or roll sold in the State of Nebraska any price for the public performance for profit of such composition?

Mr. Nye: Objected to as calling for speculation.

[fol. 1214] A. I wouldn't think so.

Q. Would you be willing to permit the publisher of any of your father's sheet music sold within the State of Nebraska to determine and fix a price to be charged for the use or rendition of the particular copyrighted musical composition within the State of Nebraska?

Mr. Nye: I object to the question as calling for speculation and assuming a state of facts not warranted by the evidence and the law.

A. No, I don't think so.

Q. Assuming that there are upwards of 367 places of amusement and entertainment in the State of Nebraska which use musical compositions, are you in a position to determine and fix a price on each of your father's compositions for the public performance for profit of that composition in the State of Nebraska at the present time?

Mr. Nye: I object to the question as calling for speculation, and as leading.

A. No.

Q. If you were required to determine and fix a price to be charged for the use or rendition of these copyrighted musical compositions within the State of Nebraska, particularly with respect to the public performance for profit of [fol. 1215] these compositions, would you personally be in a position to do that?

Mr. Nye: The question is objected to as calling for speculation.

A. No.

Q. What would you have to do to determine and fix the price for the public performance for profit of these compositions in the State of Nebraska?

Mr. Nye: Objected to as calling for speculation and conclusion, no foundation as to knowledge.

A. I should think I should have to have a lawyer or someone out there looking after that for me.

Mr. Nye: I move to strike out the answer as speculation.

Q. Would you have to employ somebody to look into the different establishments and give you some information in regard to them?

Mr. Nye: I object to the question as leading and calling for speculation.

A. Yes.

Q. Would you be able to determine and fix the price to be charged for all purposes and uses of your father's compositions, without some definite information with respect [fol. 1216] to the nature of these establishments in the State of Nebraska which use music?

Mr. Nye: Objected to as speculative, assuming facts not warranted.

A. No.

Q. Are you financially able to employ an investigator to look into these establishments and to see whether or not they were infringing your father's music in the State of Nebraska?

Mr. Nye: Objected to as leading, calling for speculation.

A. I wouldn't be able to pay an awful lot for it. I don't know what the fees would be.

Q. Are you financially able to pay a lawyer to bring suits for infringement in the State of Nebraska, on your father's compositions?

Mr. Nye: I object to the question as assuming a hypothesis not warranted by the evidence; speculation.

A. It is sort of a hard question to answer.

Q. I mean a good lawyer.

A. A good lawyer? Probably I couldn't afford to pay a good lawyer.

Q. Did your father ever receive any compensation in [fol. 1217] his lifetime from the public performance for profit of his copyrighted musical compositions, for the small

uses, that is to say, for picture theatres, for hotels, for dance halls—if you know?

A. Not until the American Society started to collect them.

Mr. Nye: Note my objection to the question as calling for hearsay.

Q. Did your father in his life time personally attempt to determine and fix a price for the public performance for profit of his compositions, with respect to these so-called small rights, if you know?

Mr. Nye: I object to the question as calling for hearsay and without foundation.

A. I would say no, I don't know.

Q. Are your father's compositions played at this time over the radio stations of the United States?

A. Yes.

Q. Are they played frequently?

A. Yes.

Q. You yourself have heard them?

A. Yes.

Q. Are they played on the hook-up stations of the National Broadcasting Company and the Columbia Broadcasting System?

[fol. 1218] A. Yes.

Q. Have you yourself heard them played time after time on those hook-up stations?

A. Yes.

Mr. Frohlich: I think that is all. You may examine.

Cross-examination.

By Mr. Hotz:

Q. Mrs. Bartlett, where do you live?

A. In New York City.

Q. Where does Clifford live, your brother?

A. No place in particular; he travels around; he has no home.

Q. Where was your father born?

A. In Dublin.

Q. Was he an Irishman by birth?

A. By birth.

Mr. Frohlich: I meant to ask one or two questions on citizenship. May I ask them now?

By Mr. Frohlich:

Q. Was your father a citizen of the United States?

A. Yes.

Q. Are you a citizen of the United States?

A. Yes.

[fol. 1219] Q. And were you born here?

A. Yes.

Q. Is that true of your brother Clifford?

A. Yes. My father became a citizen, I think, within two years after he got here—immediately took out papers.

By Mr. Hotz:

Q. There is a distinction, of course, between music that is written for plays, for example, operettas, musical plays of all sorts such as "The Red Mill" and others, and the individual pieces or songs that have been composed, is there not?

A. Yes.

Q. The American Society of Composers, Authors and Publishers have nothing whatever to do with the public performance rights of those operettas and plays; they don't have anything to do with them, do they?

A. You mean when they are broadcast?

Q. No, for public performance rights.

A. You mean if they were given on the stage, for instance, or something like that?

Q. That is a matter that you handle through your publisher?

A. No, I don't handle that through the publisher; we handle that through the Library, the Witmark Harms Music [fol. 1220] library. I will explain that to you. In St. Louis they have an operetta during the summer, and they do, say, "The Red Mill" for a week; they pay so much to the Library and then it is divided between us. The American Society has nothing to do with a performance like that.

Q. That is what I meant. The American Society of composers, Authors and Publishers have only to collect for public performance rights of the vocal and instrumental compositions where the individual song is sung or played?

A. I believe that is right.

Q. It is over that source that you have delegated and given full and complete authority to the American Society of Composers, Authors and Publishers in reference to those matters, isn't that right?

A. Yes.

Q. You have delegated and given to the American Society of Composers, Authors and Publishers the right to fix and determine the prices that are to be charged to the users of that style of musical compositions, copyrighted musical compositions, isn't that true?

A. Yes.

Q. You have no control over that?

A. No.

Q. They do that?

[fol. 1221] A. Yes.

Q. You receive as pay and compensation from the American Society of Composers, Authors and Publishers a fixed sum in accordance with the classification that you have been assigned to by the Society?

A. Yes.

Q. You know what your classification is, how it is described or designated?

A. Yes, double A, that is the top.

Q. That is the top?

A. Yes.

Q. From some of the other witnesses, composers and song writers that have testified here, they have told us that the popular music such as they write has a short life, probably four months.

A. Yes.

Q. And that the sales of musical compositions fell off materially and that their income from their publishers has dropped down considerably, that is, based on the royalties they received from the publishers.

A. Yes.

Q. In your case I notice they have not fallen off.

A. We were speaking from 1935 on; but I would say, from father's life time they were down, but I would say [fol. 1222] that the difference is that it is more or less like classical music; it is not like popular songs that last a short time.

Q. It is what you call standard type rather than the popular type?

A. Yes.

Q. In reference to these sums of money that you testified that you received from R. K. O., Warner Brothers, Hearst organization, Metro-Goldwyn-Mayer and various other picture concerns from time to time you have received from twenty-five to \$50,000, the American Society of Composers, Authors and Publishers have nothing to do with that, either?

A. No.

Q. Is that all individual contracts and arrangements that you have made between yourself, your publisher and those users?

A. Yes, they are individual contracts; the publisher doesn't share.

Q. Then the publisher does not have anything to do with it?

A. No.

Q. Who fixes that?

A. When Mr. Burkan was alive it was Mr. Burkan's idea to give a ten-year lease instead of selling them outright. [fol. 1223] we have followed that plan.

Q. Your attorney is Mr. Frohlich, now, this firm here?

A. Yes.

Q. And they attend to those matters for you?

A. Yes.

Q. So far as the legal end of it is concerned?

A. Yes.

Q. You have never read this bill out in Nebraska to know what the bill contains, I suppose?

A. No, I have not.

Q. You have not inquired into the problems out there that the users have had with the American Society of Composers, Authors and Publishers?

A. I just heard about it in a general way.

Q. Just in a general way?

A. Yes.

Q. Do you know that one of the features of that bill out there is that there has been a claim made that confusion has arisen in connection with the fixing of public performance rights, that is, the amount that should be paid by the small user, hotel, dance hall, restaurant and so forth, and that the American Society of Composers, Authors and Publishers [fol. 1224] fixed different sums to be paid, and that the bill out there is seeking to remedy that situation?

A. I just knew that was what they wanted to do.

Q. In connection with the mechanical rights, that is, the portions of music that are owned and controlled by you and your brother where there are records and rolls, that is handled, is it not, under a special contract by which a certain number of cents per roll or record is given to you?

A. Yes.

Q. Right at the time?

A. Yes, through the publisher.

Q. Through the publisher?

A. Yes.

Q. You divide that by arrangement between yourself and the publisher?

A. Yes.

Q. And your income, then, is based upon the number of records or rolls that are manufactured?

A. Yes.

Q. And in connection with the radio, the broadcasting, do you have any special contract with the National Broadcasting Company?

A. No.

[fol. 1225] Q. You have none with the Columbia?

A. No.

Q. And none of the net works?

A. No.

Q. The public performance rights in connection with music, copyrighted vocal and instrumental music in which you are interested, that is handled through ASCAP, is it not?

A. Yes.

Q. And after these records and rolls are bought and paid for by having a certain amount paid by the manufacturer that is all the further interest that you have, except the division of the money between yourself and your publisher in accordance with your contract, is that right?

A. Yes.

Q. In connection with the matter of sheet music, where it is used by individuals and firms in Nebraska for public performance rights, have you ever attempted to sit down with your publisher and figure out a sum of money that could be obtained at the time that music was sold that would include the public performance rights, so that would end it right there at the time the music was sold or purchased?

A. No.

Q. You have never done that?

[fol. 1226] A. No.

Q. You know the number of copies that have been sold, do you not?

A. Yes.

Q. And you know that from the fact that you collect royalties on the sale price?

A. Yes.

Q. Just generally, what are some of those; what division do you make?

A. Do you mean to take one number, for instance "Kiss Me Again" from "M'lle Modiste"?

Q. Yes. What would you say was your average royalty from sheet music?

A. On this one number?

Q. The average on sheet music that is sold?

A. I would say five or six thousand dollars.

Q. Translating that into percentage, two, three, four, five cents, what would it average?

A. On the sheet music most of the contracts are alike; I get three cents on each copy that is sold. Is that what you mean?

Q. Yes, that is what I mean.

A. Three cents on each copy.

Q. Have you received \$6,000 a year from that source, [fol. 1227] assuming that you get three cents from each copy—I am trying to get at the number of copies in that way.

A. It is only on the sheet music we receive three cents. If it is an arrangement we get different—probably fifteen per cent or ten per cent of the price.

Q. Now, on the arrangements, by that you mean orchestrations?

A. Yes.

Q. Arrangements for bands?

A. Yes.

Q. And the additional fee is charged of fifteen cents instead of three cents, you know that these are for public performance, do you not?

A. Yes.

Q. That the arrangement is made for public performance?

A. Yes.

Q. You have never attempted to work out for your publisher at the time that you fix those sums for the orchestra-

tions and getting up works for public performance, you have never attempted to arrange with your publisher, or discuss the matter of having included therein a fee that would also cover public performance rights?

A. No.

Q. If you did do that and if you were able to obtain an [fol. 1228] agreeable sum that you and your publisher agreed upon, that would compensate you, would it not, for public performance rights, if it was satisfactory and the user paid the price?

A. I don't see how they could agree upon it.

Q. If you and your publisher arranged a certain sum, you would know that based upon the number of copies that were sold you would know what you were going to receive, would you not, in dollars and cents?

A. I don't see how you could figure it ahead like that. To use a word that has been used so often, I would say it was highly speculative.

Q. For instance, in receiving \$6,000 for your sheet music at three cents a copy, that would anticipate two hundred thousand copies; am I right on that?

A. I think so.

Q. Suppose you have included in there another three cents for public performance rights, you would know that you were going to receive \$6,000 for public performance rights, would you not, from the users, and you would get it right directly from your publisher, the same as you do the royalty for three cents?

A. I don't know; I don't like that.

Q. You are not prepared to answer?

[fol. 1229] A. I don't like that.

Q. You don't like the idea. But nevertheless you don't mean to say that it could not be done if you and your publisher sat down and tried to work it out; you wouldn't want to go on record as saying that it could not be done?

A. I would almost say that.

Q. You have a record, have you not, of all of the numbers of pieces, vocal and instrumental music, upon which your father had obtained copyrights, from your publisher; they are all available?

A. Yes.

Q. He renders you a statement semiannually or thereabouts?

A. Yes.

Q. Showing the number of pieces that have been sold?

A. Yes.

Q. And it is upon that that your royalties are based?

A. Yes.

Q. Do you remember back as far as the case that your father had against Shanley, Victor Herbert against Shanley?

A. No.

Q. Or how it arose, or the circumstances?

A. No, I really do not.

[fol. 1230] Q. Who is your publisher, mostly?

A. Witmark published most of the things, but Schirmer also published a great many?

Q. G. Schirmer?

A. Yes. M. Witmark & Sons.

Q. Aside from Schirmer, those are all part of the Warner organization, are they not?

A. There are also other publishers. Walter Fischer, he published quite a few.

Q. They are all members of the American Society of Composers, Authors and Publishers?

A. Yes.

Q. And of course you are a member?

A. Yes.

Q. Is your brother Clifford?

A. Yes.

Q. I don't believe you are on the board of directors, are you?

A. Am I?

Q. Yes.

A. No, I am not.

Q. You know, do you not, that the American Society of Composers, Authors and Publishers have delegated to them by you and others the public performance rights, that is, the [fol. 1231] handling of the public performance rights?

A. Yes.

Q. You know that?

A. Yes.

Q. And you are also familiar with the fact, I think you told me before, they are authorized to fix and determine the fee or license that was fixed for public performance rights of copyrighted musical compositions in the State of Nebraska?

A. Yes.

Q. Is it your observation as member of the American Society of Composers, Authors and Publishers or do you know where there was any dissatisfaction among the composers and authors in reference to the classifications in which they were placed?

Mr. Frohlich: I object to the question as incompetent, irrelevant and immaterial, hearsay and speculative.

Q. If she knows.

A. I really don't know.

Q. You couldn't answer that?

A. No.

Q. Who owns the copyright on the musical compositions that formerly were your father's?

[fol. 1232] A. My brother and I.

Q. Have you assigned them to your publisher?

A. Assigned the publishing rights.

Q. To the publisher?

A. Yes.

Q. And you are paid for that assignment of those rights and the renewals, a certain royalty on each and every copy that is sold?

A. Yes.

Q. And that is covered by your contracts that are in evidence; I presume they are, are they not?

A. Yes.

Mr. Frohlich: They are all covered by the contracts.

Q. And in turn the publisher, by and with your consent and your brother's consent, has delegated to the American Society of Composers, Authors and Publishers the complete and final authority in connection with the public performance rights of the copyrighted vocal and instrumental musical compositions?

A. The small rights.

Q. And the fixing of the fees and licenses therefor?

A. Yes.

Q. And that is universally the custom with persons who [fol. 1233] are the writers and owners of musical compositions in New York?

A. Yes.

Q. And with the publishing houses?

A. Yes.

Mr. Hotz: I think that is all.

[fol.1234] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEBRASKA, LINCOLN DIVISION

No. Eq.-562

GENE BUCK, Individually and as President of the American
Society of Composers, Authors and Publishers, et al.,
Complainants,

vs.

HARRY R. SWANSON, as Secretary of State of Nebraska, et al.,
Defendants

STATE OF CALIFORNIA,
County of Los Angeles, Southern District of
California, Central Division, ss:

Depositions of Jerome Kern and Sigmund Romberg, the witnesses produced and examined at the office of Philip Cohen, Esq., Room 1217, 707 South Hill Street, City of Los Angeles, County of Los Angeles, State of California, before William J. Stahly, a Notary Public in and for the County of Los Angeles, State of California, residing in said County and State, this 15th day of June, 1937, at 10:00 o'clock in the forenoon of that day, the undersigned William J. Stahly, Notary Public, having held the said hearing at said time and place, pursuant to the notice of taking depositions, and [fol.1235] stipulation dated March 28, 1938, and stipulation dated April 23, 1938 and stipulation dated May 11, 1938 and stipulation dated May 28, 1938, in the above entitled action pending and at issue therein between Gene Buck, individually and as President of the American Society of Composers, Authors and Publishers, et al., complainants, versus Harry R. Swanson, as Secretary of State of Nebraska, et al., defendants; complainants appearing and being represented by Louis D. Frohlich, Attorney at Law, and the defendants neither appearing at the said hearing nor being represented by counsel.

The said Jerome Kern and Sigmund Romberg, being first duly sworn by the undersigned, William J. Stahly, Notary Public in and for the said County and State, to testify to the truth, the whole truth and nothing but the truth, being thereupon examined, testified as follows:

Direct Examination by L. D. Frohlich, of Counsel for Plaintiffs.

Examination of JEROME KERN.

By Mr. Frohlich:

Q. What is your full name and address, Mr. Kern?

A. Jerome David Kern.

Q. And you reside where?

A. 917 North Whittier Drive, Beverly Hills, California.

Q. What is your occupation?

[fol. 1236] A. I am a composer of music.

Q. How many years have you been engaged in that occupation?

A. Since 1903. That is 35 years.

Q. Have you specialized in the composition of any particular type of music?

A. Yes.

Q. And what type is that?

A. Musical comedy and light opera.

Q. I show you a list of compositions and ask you to look at this list and tell us whether it fairly sets forth the compositions that have been composed by you during the past 35 years?

A. Well, this is a list arranged alphabetically and as nearly as I can see at a glance it approximates an accurate list of my published works.

Q. I will offer that in evidence as complainants exhibit 1.

(List referred to was received by the Notary Public, marked Complainants Exhibit 1, and the same is attached to and made a part of this deposition.)

Q. Now, Mr. Kern, in composing these compositions did you from time to time have collaborators who wrote the words or lyrics of those compositions?

A. Oh, yes.

Q. And after these compositions were written and composed by you and your collaborators did you have these compositions published by music publishers from time to time?

A. Yes. You mean chronologically? I have not immediately after.

Q. At some time?

A. Usually they are copyrighted and published after they were in a play. In other words material on a shelf is rarely published.

Q. In composing your music of these compositions that appear in plaintiff's exhibit 1 did you have in mind that these compositions would first be performed on the stage before they were published?

A. Almost invariably.

Q. And was it the practice with respect to your compositions to have them performed on the stage before they were actually published?

A. Yes.

Q. And until these compositions of yours that appear in complainants Exhibit No. 1 were actually published was there any copyright taken out on these compositions, if you know?

A. Almost without exception no copyright.

Q. And when for the first time was copyright taken out on these compositions of yours?

[fol. 1238] A. Almost immediately after a production, if the importance of the number merited production at all.

Q. Let's take some of these comic opera, light operas or dramatic-musical works to which you wrote the music, did they contain individual compositions?

A. Yes.

Q. And in addition to that individual musical composition did these works also contain various ensembles, opening choruses,—

A. Yes, and dance and incidental music.

Q. What was the important music and the music having the greatest commercial value in these theatrical-musical compositions?

A. The theme songs, the love songs, the comedy songs, and so forth.

Q. And these songs that you have named were they songs that were eventually published by your publishers and sold to the public?

A. Yes. In other words they became sort of a trade mark of the particular operetta and identified with it.

Q. Did many of your compositions so published attain financial success?

A. Yes, many of them.

Q. Did your publisher sell many thousand of copies [fol. 1239] of your musical compositions over the years?

A. In the early days many thousands of copies.

Q. Which publishing firm for the most part published your musical compositions over the years?

A. T. B. Harms Musical Company.

Q. Is that a large music publishing firm?

A. It is a large and important musical publisher.

Q. And did this publishing firm pay you royalties on the individual compositions which you composed?

A. Every copy that they sold they paid a royalty on.

Q. What was the usual royalty you received per copy of sheet music?

A. Three cents a copy for the music.

Q. And your collaborator who wrote the lyrics would also receive something on that musical composition?

A. The same amount. Always split fifty-fifty.

Q. Did you have any individual contract with T. B. Harms on the compositions in composing each one?

A. No.

Q. Did you have any contract?

A. No. Very close association with some people who were friends.

Q. Is it your testimony that there was no contract?

[fol. 1240] A. There was, through the years, an all understanding.

Q. Now, under the arrangement or understanding that you had with T. B. Harms, did you give them performing rights in your compositions enumerated in Exhibit 1?

A. No.

Q. Did you ever give to any publisher in the United States or elsewhere the performing rights of any of your compositions?

A. No.

Q. Did you reserve those performing rights to yourself?

A. Entirely to myself and collaborator.

Q. Of course when I speak of you, I speak of you and your collaborator?

A. Yes.

Q. How many types of performing rights are there?

A. Grand right or stage right, as we call it, and the small or non-dramatic performing right.

Q. Now, how do you define the grand or stage right?

A. That is the right leased or sold to a manager, a producing manager, for the right to use the composition in a play performed by human beings on the stage.

Q. And how do you define non-dramatic performing [fol. 1241] right or small right or *small right*?

A. The small right is the right to use in public for profit whether vocally or instrumentally, the musical composition for purposes of entertainment.

Q. Were the performing rights of your musical compositions, both non-dramatic and stage rights of value to you?

A. Yes, they are my first source of livelihood.

Q. Did you receive any royalty from the producers of plays or of dramatical musical works in which your musical composition- were performed on the stage?

A. Yes, either in cash payment or in percentage of the box office intake; and as my importance and standing increased, naturally the terms were better.

Q. And were these sums you received from performing rights on the stage substantial over the years?

A. Yes.

Q. Can you tell us how much you received from the stage rights of all of your musical compositions on an average each year during this period?

A. Well, I would say that a successful musical play with a run in the metropolis and subsequent road runs yielded around \$50,000.00.

Q. For the entire run of the production?

A. For the run of the production.

[fol. 1242] Q. Can you mention a few of the more successful plays for which you wrote the music?

A. Yes.

Q. Will you give us that list, Mr. Kern?

A. Sally, Sonny, Showboat, The Cat and the Fiddle, Music in the Air, Sweet Adeline, Stepping Stones, Very good Eddie, Leave it to Jane, Oh Lady Lady, Good Morning, Dearie, and many others.

Q. From time to time as your publisher published the compositions that are set forth in Exhibit No. 1, did your publisher grant to manufacturers of mechanical records the right to manufacture records and piano rolls of your musical compositions?

A. Frequently.

Q. And in granting these rights were you consulted?

A. Yes.

Q. Were you a party to the contract with the manufacturers of records and rolls?

A. No.

Q. Who made the contracts, just the publisher?

A. The publisher and the manufacturer. Well, I had a participating interest.

Q. And when the publisher received any royalties by way of the manufacture of these records and rolls, did he pay you a percentage of the royalties from time to time? [fol. 1243] A. Yes. I got half of all the publisher received.

Q. Were your compositions played in the state of Nebraska from time to time, if you know?

A. Yes.

Q. On what do you base your knowledge that your compositions were played in that state?

A. Because a great many of my shows toured the country and were routed through almost every large city, including Omaha and other cities in the state of Nebraska, and millions of records were sold in the state of Nebraska, and were of course played in that state. I have composed a great many songs that have been used in motion pictures, and these motion pictures have been played in all the cities or towns in the State of Nebraska where there are motion picture theaters.

Q. Mr. Kern, in looking over complainants exhibit No. 1, I notice under the column "renewed," various compositions with dates and the names of publishers. Would you explain for the record what that column indicates?

A. It indicates that after the life of the copyright, namely 28 years, the copyright is renewed by the staff of the publisher, for convenience only, in the name of the author and the composer.

Q. Have these various compositions that appear on the column "renewed" been renewed for your account and [fol. 1244] benefit?

A. Yes.

Q. And do the renewals belong to you?

A. Yes.

Q. Have these renewals of the compositions a commercial value to you?

A. Yes.

Q. And will all of your compositions be renewed from time to time as the original date of copyright expires?

A. Yes.

Q. And when these compositions are renewed do you continue to receive royalties from the publishers of the compositions?

A. Yes.

Q. And do you and will you continue to receive compensation by way of royalties from musical productions of these compositions?

A. Yes. There have been many instances where songs that have been dormant have been re-issued by the record people. Several are on the market now, remakes of old compositions, and they receive the same treatment. They are renewed and receive the same treatment as new compositions.

Q. How many compositions of yours have been renewed?

A. Approximately 48 to date.

[fol. 1245] Q. What value do you place upon the renewal of these 48 compositions?

A. I consider them worth for the next 28 years, \$1,000 a composition.

Q. And would the sum of \$1,000 a composition as the value be true with respect to your other compositions which will be renewed from time to time?

A. I would consider that an absolute minimum. I think \$1,000.00 is too little. I wouldn't sell a motion picture concern a copyright for \$1,000.00. I would ask for renewal rights.

Q. Mr. Kern, are you a member of the American Society of Composers, Authors and Publishers?

A. I am.

Q. What is that society?

A. That is a society formed for the protection of copyright owners, of authors, composers and publishers, and the owners or proprietors of copyrights.

Q. And what is the function of that society?

A. It licenses non-dramatic performing rights of the compositions of its members and collects license fees for these licenses, for the license to publicly perform for profit those compositions.

Q. When was that society formed?

A. 1914.

[fol. 1246] Q. Were you one of the founders?

A. I was one of the original members.

Q. You were one of the original members?

A. Yes.

Q. When did you join that society, about?

A. 1914.

Q. And have you been a member continuously since 1914?

A. Yes.

Q. And have you executed contracts from time to time with the American Society of Composers, Authors, and Publishers?

A. Yes.

Q. I show you this contract dated September 18, 1935, and ask you whether you recognize the signatures on the contract?

A. That is my signature.

Q. And do you recognize the signature of the person who signed for the American Society of Composers, Authors and Publishers?

A. Yes.

Q. And whose signature is it?

A. Joseph Young.

Q. And he is an officer of the Society of Composers, Authors and publishers?

[fol 1247] A. Yes.

Q. I will offer this in evidence.

(Contract referred to, was received by the Notary Public, Marked complainants Exhibit No. 2, and the same returned to Mr. Frohlich.)

Q. I show you, Mr. Kern, what purports to be a photostatic copy of complainants exhibit No. 2, and ask you if that is a true and correct copy of complainants exhibit No. 2?

A. Yes.

Q. I will offer that in evidence and as complainants exhibit 3.

(Photostat copy of complainants exhibit No. 2, was received by the Notary Public, marked complainants Exhibit No. 3, and the same is attached to and made a part of this deposition.)

Q. Were you a member of the Board of Directors of that society?

A. Yes.

Q. When were you such member, approximately?

A. I have been a member of the Board of Directors for about ten years.

Q. Do you receive royalties from the American Society of Composers, Authors, and Publishers from time to time?

[fol. 1248] A. Yes.

Q. What royalties did you receive from the Society for the year 1936?

A. \$14,576.16.

Q. What royalties did you receive in 1937?

A. \$17,480.65.

Q. Does the American Society of Composers, Authors and Publishers employ local representatives throughout the United States?

A. Yes.

Q. Does it employ counsel?

A. Yes.

Q. Now, if you were acting independently of the American Society of Composers, Authors and Publishers or any other group or combination, would you be able to determine and fix the price to be charged for the use or rendition of your copyrighted musical compositions within the state of Nebraska?

A. No.

Q. Would you be able at the time of the publication and sale of your musical compositions within the state of Nebraska to tell the amount of monies that would be a reasonable charge for the performing rights of your compositions within that state?

A. No.

[fol. 1249] Q. Would you, in order to determine and fix a price to be charged for the performing rights of your compositions in the State of Nebraska, be required to obtain information and data with reference to use of your musical compositions within that State?

A. Certainly.

Q. And in order to acquire such information and data would you be able to do that yourself?

A. No.

Q. Would you be compelled, in order to acquire such information and data, to employ investigators and representatives in the State of Nebraska?

A. In great numbers.

Q. Would it be necessary for you to acquire information and data with respect to the users of musical compositions in the State of Nebraska to determine the nature of various establishments in that State?

A. Certainly.

Q. Would you be required to obtain information and data with reference to the nature of the use of your compositions by these establishments in that state?

A. Yes.

Q. Would the employment of agents and representatives in the State of Nebraska entail expense to you?

[fol. 1250] A. Expense in actual money and more important, in time. I would have time for little else.

Q. What do you estimate it would cost you to employ a man or a number of men to go around in the state of Nebraska to ascertain information with respect to the establishments that use your musical compositions in that state?

A. It would cost me anywhere from five to ten thousand dollars a year. I would have to have a man, skilled in music, and who would want at least fifty or seventy-five dollars a week, and I would have to pay his hotel bills, traveling expenses, and I would have to employ a number of such men, and I would have to have an office in the state of Nebraska. All of that I would estimate would cost me anywhere from five to ten thousand dollars or more a year.

Q. In order for you to protect yourself with respect to infringement in the State of Nebraska would you be compelled to employ investigators to listen to radio establishments in that state?

A. Yes, and dance halls.

Q. Would you be compelled to employ investigators to go around to dance halls, cabaret, motion picture theaters, hotels, and other places of amusement and entertainment in that state?

A. Yes.

[fol. 1251] Q. Would such investigators entail expense to you?

A. Certainly.

Q. What would you estimate that to be?

A. Another five or ten thousand dollars.

Q. Would you have to employ a lawyer in the state of Nebraska in infringement suits for your musical compositions have been infringed in that state?

A. Yes.

Q. What would you estimate a lawyer would cost you for that purpose?

A. Another five thousand dollars a year.

Q. Are you financially able to bear such an expense to protect your musical compositions in the state of Nebraska?

A. No. The cost of such representation would be much more than my receipts.

Q. Is the American Society of Composers, Authors and Publishers doing this service for you?

A. Yes.

Q. And would you be able to continue your present livelihood as a composer without the aid of the American Society of Composers, Authors and Publishers?

A. Certainly not.

Q. Would you be able, acting alone and independently [fol. 1252] today, to fix a price on each and every one of your musical compositions within the state of Nebraska for the purpose of television?

A. Not a fair price.

Q. And why?

A. Because television today is in the experimental stage and we do not know how extensive it may become or how important the use of it will be. It may affect other uses and may destroy the value of other uses, and until television becomes an accepted fact, no one today in my profession is able to judge with any degree of accuracy what a fair price for the public performance for profit would be on my compositions.

Q. Are you willing to permit the manufacture of mechanical records and musical roles of your compositions to fix a price on their records and roles for certain performance for profit of your compositions?

A. No.

Q. Have these manufacturers of records and roles any contractual right as far as you know to license users in the state of Nebraska to publicly perform or profit such records and roles and collect fees therefrom?

A. No.

Q. Are you willing to give them such right?

A. No.

[fol. 1253] Q. Are you able in any way to compel such manufacturers of records and roles to collect royalties for the public performance for profit of your compositions and pay you a share thereof?

A. No.

Q. Are your musical compositions frequently performed by radio broadcasters outside the state of Nebraska?

A. Yes, very often.

Q. Are your musical compositions performed by radio outside the state of Nebraska on National hookup?

A. Frequently.

Q. And in these hookups are there radio stations within the state of Nebraska that re-perform your musical compositions so performed outside the state of Nebraska?

A. Yes.

Q. Are you able to control the re-performance or re-broadcast of your compositions outside the state of Nebraska to be re-performed and re-broadcasted within the state of Nebraska?

A. No.

Q. Are you able to control the performance of your compositions on motion pictures in which your compositions appear within the state of Nebraska?

A. No.

Q. Please state how your musical compositions are [fol. 1254] turned over to producers of motion pictures?

A. I contract with producers of motion pictures to write musical compositions that appear in their pictures. This form of contract is known as synchronization. The compositions are synchronized with the action of the picture and are re-produced when the picture is shown on the screen. The producers of the motion picture distribute their pictures throughout the United States and foreign countries, and these pictures so distributed by them appear upon the screen of the exhibitors within the state of Nebraska. I have no control over the manner of distribution. That is purely within the control of the motion picture producers and distributors.

Q. Is it desirable from your view point as a composer of production music to affix to the sheet music of the compositions sold within the State of Nebraska a price for the public performance for profit of your compositions at the time the compositions are sold within the state of Nebraska?

A. No.

Q. Is it desirable from a commercial point of — your compositions to with-hold the public performance for profit of your compositions from time to time even though the actual sheet music is sold and published?

A. Yes.

[fol. 1255] Q. Has that been the practice throughout the years with your musical compositions?

A. Yes.

Q. Please explain the reason for this?

A. My compositions have been, as I testified before written for stage productions. While production is running both in big cities and on tour, it is desirable to prevent others from performing these compositions, because such performance would be in competition with the particular stage production, and would destroy the commercial value of such production. Therefore, I have invariably restricted the public performance of my compositions until these compositions and the plays in which they appeared have run their course. That is true with all production writers. To permit these compositions to be performed indiscriminately for profit would jeopardize the commercial value of the compositions and the stage productions in which they were performed and for which they were written. For that reason I cannot and will not determine and fix a price to be charged for the public performance for profit of my compositions at the time of the publication of these compositions. Many a composition is published that has no value at all from a view point of sheet music sales. Its chief and most often its only value is for the stage production performance or the grand right. These compositions are always restricted by me and by my publisher.

[fol. 1256] Q. Under the Nebraska statute you lose that valuable right?

A. Absolutely.

Q. Has the broadcasting of your compositions upon the radio affected the sale of the sheet music of your compositions, if you know?

A. Yes.

Q. Are you familiar with the music publishing business generally?

A. Yes.

Q. Do you know whether it was the usual thing for a popular musical composition prior to the advent of radio to sell a million copies?

A. Yes, frequently.

Q. Have there been any sales of musical compositions to the extent of million copies or more since 1922?

A. Not that I know of.

Q. What does radio do to the popularity of a musical composition?

A. Radio performances of a popular composition are over-done. Frequently the same song is played by many stations throughout the country two or three times a night. For that reason a musical composition, no matter how popular or its merit loses its popularity and vogue after a period of five, six or seven weeks. That adversely affects [fol. 1257] the sale of sheet music and other rights with respect to the composition. Radio just simply over-popularizes and kills music today, making it a nuisance rather than an entertainment.

Q. What value do you place on your contract, complainants exhibit- 2 and 3?

A. Considering the income that I have derived from the Society during the years and considering that — have the right to renew my contract with the Society each five years, and considering the protection which the Society gives me, I consider my contract with the Society worth at least \$250,000.00.

Q. Are you willing to have your contract with the Society declared invalid and void?

A. No.

Q. Have you any agent or representative within the state of Nebraska at the present time?

A. No.

Q. Do you transact business within the state of Nebraska at the present time?

A. No.

Q. Are you domiciled within the state of Nebraska?

A. No.

Q. Are you a citizen of the United States?

A. Yes.

[fol. 1258] Q. Before you domiciled in the state of California what was your domicile?

A. New York state.

Q. Now, prior to the time that you joined up with the American Society, Composers, Authors and Publishers were your musical compositions performed publicly for profit in the United States?

A. Yes.

Q. Did you receive any revenue from such publication?

A. No.

Q. Did any user anywhere in the United States ever come to you with the request to perform publicly for profit your musical compositions?

A. No.

Examination closed.

Subscribed and sworn to before me this — day of June, 1938. —, Notary Public in and for the County of Los Angeles, State of California.

[fol. 1259] Deposition of Sigmund Romberg

SIGMUND ROMBERG, having been first duly sworn under oath by the Notary Public to testify the truth, the whole truth, and nothing but the truth relative to the above entitled action, testified as follows:

Direct examination by L. D. Frohlich, of Counsel for Complainants.

Examination of Sigmund Romberg.

By Mr. Fromlich:

Q. Mr. Romberg, what is your full name?

A. Sigmund Romberg.

Q. Where do you reside?

A. 1023 North Roxbury Drive, Beverly Hills, California.

Q. Are you a citizen of the United States?

A. Yes.

Q. Where was your domicile prior to coming to California?

A. New York City.

Q. What is your occupation?

A. Musical composer.

Q. And how many years have you been such a composer?

[fol. 1260] A. Since 1910.

Q. Is that your only means of livelihood?

A. Yes.

Q. Have you specialized in the composition of any particular type of music?

A. Yes, stage productions and moving pictures.

Q. Will you give us a list of some of the better known stage productions of which you composed the music?

A. Maytime, Soldier Boy, The Magic Melody, Blossom Time, Student Prince, My Maryland, The Desert Song, New Moon, Forbidden Melody, Mayfair.

Q. Give us the names of some of the motion pictures for which you wrote the music.

A. Viennese Nights, Children of Dreams, The Night is Young, The Girl of the Golden West.

Q. I show you a list of musical compositions purported to have been composed by you and ask you if that is a true and accurate list of your compositions?

A. It is.

Q. I will offer that in evidence as Complainant's Exhibit 4.

(The list referred to was received by the Notary Public and marked Complainant's Exhibit 4, and the same is attached to and made a part of this deposition.)

Q. How many renewals of your compositions have there been?

[fol. 1261] A. Only one so far.

Q. What is the name of that renewal?

A. Memories.

Q. Was that the renewal of the composition Memories?

A. Yes.

Q. Now, from time to time will your compositions be ripe for renewal?

A. Yes.

Q. And do you intend and propose to renew these compositions?

A. Yes.

Q. Have these compositions value for you with respect to renewal periods?

A. Naturally.

Q. And will you continue to receive royalties and emoluments from the renewal of your compositions?

A. Yes.

Q. What do you value each of your compositions with respect to renewal rights?

A. At least \$1000 a renewal.

Q. Were your compositions published from time to time by various publishers?

A. Yes.

Q. And did you in your contracts with these publishers [fol. 1262] ever give any of the publishers the right to publicly perform for profit your composition?

A. The publishers?

Q. Yes.

A. No, I did not.

Q. Did you reserve that right yourself?

A. Yes.

Q. Did you also reserve yourself the stage right for these compositions?

A. Yes,

Q. As a matter of fact a great many of your compositions were played on the stage a long time before they were finally released, isn't that so?

A. That is right.

Q. And was it a customary thing when you wrote the music for a dramatical-musical work to restrict and reserve the public performance for profit of such composition during the run of the particular play?

A. Yes.

Q. And what was that due to?

A. Well, so that the musical material in the show should remain fresh and interesting, and I didn't want any composition between outsiders and the people who spent money, thousands of dollars, in producing these shows. It was a form of protection.

[fol. 1263] Q. Assuming you were compelled to act independently and not in combination with other composers, could you, under the Nebraska statute, reserve this right of public performance for profit and the stage right if you were compelled to determine and fix the price to be charged for the use or rendition of that musical composition in the state of Nebraska?

A. No, I couldn't. I would be utterly helpless.

Q. From time to time have you received royalties from publishers for sheet music?

A. Yes.

Q. What was the usual royalty?

A. Three cents on each copy for sheet music.

Q. What did your collaborator receive?

A. He received about the same.

Q. If there were two collaborators?

A. They split up between them.

Q. Did you also receive from your publishers from time to time royalties from the reproduction of your compositions for records and musical rolls?

A. Yes.

Q. How were these records and music rolls manufactured?

A. They were manufactured under an arrangement with the publisher and he received usually the two cents per roll [fol. 1264] or record which the copyright law fixes as the compulsory price, and I received usually one half of what the publisher received.

Q. Did you at any time make a special contract with any manufacturer of rolls or records for the manufacture of such rolls and records?

A. No. That was always done by my publisher.

Q. Have you the right to go to any manufacturer of music rolls and records and compel him to fix a price for the public performance of profit of such rolls or records within the state of Nebraska?

A. No.

Q. Would you want to give any manufacturer of music rolls and records of your compositions the right to collect royalties in the state of Nebraska for the public performance for profit of your compositions?

A. No.

Q. Have you any control over the distribution of the rolls and records manufactured by these manufacturers of your compositions in the past?

A. No.

Q. Have you any control over the method of distribution of any of the motion pictures in which your compositions appear?

A. No.

Q. Have your compositions been played in the state of [fol. 1265] Nebraska over the years?

A. Yes, many times.

Q. Did the plays for which you wrote the music tour the state of Nebraska?

A. Yes.

Q. Have musical rolls and records of your compositions been sold within the state of Nebraska, if you know?

A. Yes.

Q. And have sheet music of your compositions been sold within the state of Nebraska?

A. Yes.

Q. Have you any control at the present time over any of the sheet music that has been sold in the state of Nebraska of your compositions?

A. No.

Q. Are you able to determine and fix a price at the present time for the public performance for profit of your compositions in the state of Nebraska?

A. No.

Q. Have you any information or data with respect to the establishments where music is used in the state of Nebraska at the present time?

A. No.

Q. What would you have to do in order to acquire such [fol. 1266] data and information?

A. I would have to employ an agent or representative within that state, or maybe a number of such agents and representatives. I would have to pay salaries of \$50, \$75 or \$100 a week to such agents. I would have to employ an investigator to go around and see that my compositions are not infringed. I would have to employ a lawyer, and from my past experience of people experienced in music and the salaries they demand I am sure that would involve an expense of over \$10,000.

Q. Are you able financially to bear that expense?

A. No.

Q. Is the Society doing this service for you at the present time?

A. Yes.

Q. Would you be able to receive any monies for the public performance for profit for your compositions in the state of Nebraska if it were not for the Society?

A. No.

Q. If you were required to act independently and not in combination with anyone could you at the present time affix to the sheet music of your compositions sold in the state of Nebraska any price for the television rights of your compositions?

[fol. 1267] A. No.

Q. Have you any information presently that would assist you to fix a fair price for such television use in the state of Nebraska?

A. No.

Q. Is there any way in which you could acquire such information?

A. No.

Q. If you were compelled to act alone and independent to fix the price for public performance for profit in the state of Nebraska would that interfere with the production of the stage plays for which you write music?

A. Yes.

Q. Would it jeopardize the commercial value of these stage plays?

A. Yes.

Q. Would it jeopardize the investment of the producers of these stage plays?

A. Yes.

Q. Would it result in competition between the producers of these stage plays and users of the musical compositions within the state of Nebraska?

A. Yes.

Q. Is it desirable, from a commercial standpoint, with [fol. 1268] respect to your musical compositions, to defer the public performance for profit of many of your compositions?

A. Yes.

Q. Is that due to the nature of the business?

A. Yes.

Q. And does the Nebraska statute prevent you from exercising that right?

A. Yes.

Q. Mr. Romberg, are you a member of the American Society of Composers, Authors and Publishers?

A. Yes.

Q. And when did you join that Society?

A. 1917.

Q. And have you been a continuous member since that day?

A. Yes.

Q. Have you presently a contract in force with that Society?

A. Yes.

Q. I show you this document, dated September 16th, 1935, and ask you whether you recognize the signatures on the document?

A. Yes.

Q. Is that your signature?

A. Yes.

Q. Is that the signature of Joseph Young, secretary of [fol. 1269] the Society?

A. Yes. I am familiar with it.

Q. I will offer this in evidence.

(Document entitled Agreement between Sigmund Romberg and American Society of Composers, Authors and Publishers, was received by the Notary Public, marked Complainant's Exhibit No. 5, and returned to Mr. Frohlich.)

Q. I show you what purports to be a photostatic copy of Plaintiff's Exhibit No. 5 and ask you if this is a true and accurate copy of this exhibit?

A. Yes.

Q. I will offer this in evidence as Complainant's Exhibit 6.

(Photostatic copy of Complainant's Exhibit 5, namely Agreement between Sigmund Romberg and American Society of Composers, Authors and Publishers, was received by the Notary Public, marked Complainant's Exhibit No. 6, and the same is attached to and made a part of this deposition.)

Q. Were you at one time a member of the board of directors of the American Society of Composers, Authors and Publishers?

A. Yes.

Q. Can you tell us what revenue you received from the Society in the year 1936?

[fol. 1270] A. \$14,576.16.

Q. What royalties did you receive from the Society in 1937?

A. \$17,480.65.

Q. You consider the contract, Plaintiff's Exhibit 5 and 6 of value to you?

A. Yes.

Q. And what do you value this contract at?

A. At least \$250,000.

Q. Are you willing to have this contract declared invalid?

A. No.

Q. Prior to 1917 did you receive any compensation for the public performance for profit of any of your compositions?

A. No.

Q. Did ever any user of music in the United States ever come to you prior to 1914 and request you to license him to publicly present for profit any of your compositions?

A. No.

Q. Is the Society doing something for you which you are unable to do for yourself?

A. Yes.

Q. And do you want the Society to continue to function in [fol. 1271] that manner for you?

A. Yes.

Q. You have spent practically the greater part of your life in the musical profession, haven't you?

A. Yes.

Q. And you are familiar with the profession?

A. Yes.

Q. And the problems of the members of the profession?

A. Yes.

Q. Do you know if any composer in the United States ever received any compensation for the public performance for profit of his compositions prior to the time the Society was formed?

A. As far as I know, and with my familiarity with the profession I do not know of a single composer in the United States who ever received any monies for public performance for profit of his compositions before the Society began to function.

Q. Are your musical compositions performed on radio broadcasts outside the state of Nebraska?

A. Yes.

Q. And are your musical compositions frequently re-broadcast by radio broadcasting stations within the state of Nebraska?

[fol. 1272] A. Yes.

Q. Is that done by means of the hook-up?

A. Yes.

Q. Are you able to control the re-broadcast of these compositions within the state of Nebraska that have originally been broadcast outside the state of Nebraska?

A. No.

Q. What is the usual price charged by your publisher for the sheet music of your compositions?

A. 22 cents per copy.

Q. Has that been the average charge over the period of years over which you have been composing music?

A. Yes.

Q. These copies of sheet music are purchased by members of the public from time to time, isn't that right?

A. Yes.

Q. Now, what class of the public is the greatest purchaser of sheet music of your compositions?

A. Singers, public schools, private performers, amateur performers.

Q. If you were compelled to affix to the copy of sheet music the sales price for all purposes including public performance for profit would that adversely or otherwise effect the sale of sheet music of your compositions?

[fol. 1273] A. Yes.

Q. How would it effect it?

A. If I were compelled to follow this Nebraska statute and place on the copy of sheet music a price for all users so that the purchaser would have to pay all of that price when he purchased the sheet music, there isn't a single purchaser in the state of Nebraska who would buy a copy of my music, because he couldn't afford it, and the result is that the sale of my music would so fall off and diminish at once practically to the vanishing point within the state of Nebraska.

Q. Are you domiciled in Nebraska?

A. No.

Q. Were you ever domiciled there?

A. No.

Q. Have you any agent or representative in that state?

A. No.

Q. Do you transact business in that state?

A. No.

Examination Closed.

Subscribed and sworn to before me this — day of
June, 1938. — — —, Notary Public in and for
the County of Los Angeles, State of California.

[fol. 1274] STATE OF CALIFORNIA,
County of Los Angeles,
Southern District of California,
Central Division, ss:

I, William J. Stahly, a Notary Public in and for the
County of Los Angeles, State of California, residing in the

city of Los Angeles, County of Los Angeles, State of California, do hereby swear:

That Jerome Kern and Sigmund Romberg, the witnesses produced pursuant to the notice of taking depositions and the stipulations dated March 28th, 1938, April 23rd, 1938, May 11th, 1938 and May 28th, 1938, personally appeared before me on the 15th day of June, 1938, at 10:00 o'clock in the forenoon of that day, the undersigned Notary Public being neither of counsel nor kin to either party, having held the said hearing at the said time and place, at the office of Phillip Cohen, Esq., Room 1217, 707 South Hill Street, City of Los Angeles, County of Los Angeles, State of California, and being by me duly sworn to tell the truth, the whole truth, and nothing but the truth, and being by me duly cautioned to testify to the whole truth and nothing but the truth, the said witnesses thereupon answered to the several questions propounded to them by Louis D. Prohlich, of counsel for the Complainants, as shown in the foregoing [fol. 1275] depositions, and there being no appearances on behalf of the defendants, and a telegram having been received dated June 13th, 1938, which is hereunto annexed, which telegram stated, "Nebraska Attorney General Will Not Appear For Depositions June Fifteenth," and which was signed by Barlow Nye Administrative Assistant Attorney General, of the State of Nebraska, and the said witnesses having deposed to all the matters contained therein as shown thereby; and the Complainants' Exhibit No. 3 having been examined and compared by me with Complainants' Exhibit No. 2, and having been found to be a true and accurate copy of Exhibit No. 2; Exhibit No. 6 having been examined and compared by me with Complainants' Exhibit No. 5, and having been found to be a true and accurate copy of Exhibit No. 5;

I Further swear that when said depositions were completed and transcribed they were carefully read by the said Jerome Kern and Sigmund Romberg, the witnesses aforesaid, and were corrected by them in each and every particular they desired, and they were then subscribed by the said witnesses;

I Further swear that I am a shorthand reporter, and that said depositions were taken down by me in shorthand at the time and place hereinabove named, and were thereafter [fol. 1276] transcribed into typewriting under my supervision.

I Hereby swear that the foregoing —, comprise a full, true, correct and impartial transcript of my shorthand notes of said depositions.

In Witness Whereof, I have hereunto subscribed my name and affixed my seal of office this — day of June, 1938.

—, Notary Public in and for the County of Los Angeles, State of California.

[fol. 1277] GENE BUCK called as a witness on behalf of the complainants, and after being duly sworn, testified as follows:

Direct examination.

By Mr. Frohlich:

Q. What is your full name?

A. Gene Buck.

Q. Where do you reside?

A. Great Neck, New York.

Q. Are you a citizen and resident of the State of New York?

A. Yes, sir.

Q. How long have you lived in that state?

A. Thirty-three years.

Q. Where did you originally come from?

A. From Detroit, Michigan.

Q. How old were you when you came to New York?

A. Twenty-one.

Q. And what profession or business did you pursue?

A. I was originally an artist for three years, and then started to write songs.

Q. The words or the music?

A. Mostly the lyrics—the words, and also some music; and from that, the writing of songs, which I am primarily interested in, into the writing of musical plays and the production of musical plays.

Q. Were your musical compositions published from time to time?

A. Over five hundred of them.

[fol. 1278] Q. I hand you this list of musical compositions, Mr. Buck, and ask you whether this list accurately and truly represents musical compositions composed and published by you?

A. Yes, those are the numbers. I wrote forty productions for the late Florenz Ziegfeld and his Follies.

Mr. Frohlich: I will offer in evidence plaintiffs' Exhibit Number 1.

Q. You say you were associated with the late Florenz Ziegfeld for many years?

A. Yes, sir.

Q. Did he produce plays known as the Ziegfeld Follies?

A. Yes, sir.

Q. Were they highly successful plays?

A. I believe the most successful reviews ever produced in America.

Q. Did you have anything to do with the writing of any part of those plays?

A. Yes.

Q. For how many years were you connected with him?

A. Twenty-three years.

Q. Did you become a member of the American Society of Composers, Authors and Publishers at one time?

A. I was one of its original founding members in 1914.

Q. Can you give us the names of the other gentlemen who helped found that organization?

A. The real founder, the instigator of this society, was the late Victor Herbert, who called us together. It also consisted of Louis Hirsch, composer, Raymond Hubbel, [fol. 1279] Glenn McDonough, Silvio Hein, and Henry Blossom. This was part of a small group of composers and authors.

Q. Are you familiar with the conferences and talks between these various persons you have just named with reference to the incorporation or organization of the Society?

A. I was with them when it was brought into being.

Q. Do you know what brought about the organization of the Society?

A. Yes, sir.

Q. Will you please tell us briefly?

A. There was in this country at this time authors and composers who were confronted with a situation that had never happened before. That is, large companies, corporations and users of music were taking their works without asking the men who created it or their publishers, and started to build industries in this country on the productions of their brains. At first it started with the phono-

graph companies, who without paying George M. Cohan or Victor Herbert or Phillip Sousa or the man who created the songs in this country, a nickel, took their works and put them on phonograph records and built one of the great businesses of the world, and up to that time the man who created that song—the words and music—and his publisher never received a nickel in royalty. In 1909 Mr. Nathan Burkan, since dead, the attorney for Victor Herbert, marched to Washington and said that something should be done about this situation. Theodore Roosevelt was President of the United States at that time, and he also had a gift for writing. When this situation was brought before [fol. 1280] him he said that the law should be changed and that the composers and authors should receive some recognition for their compositions and writings being violated. These records were made and sent all over the world and this terrific injustice existed. He made a recommendation to Congress, and the Act of 1909, or revision of the Copyright Act, was put into the Copyright Act. It was the first fundamental protection, which is going to flow through this case, this recognition of the rights of creative workers. I merely highlight this so that you get some of the atmosphere that's in this case, which is good for the record and good for your minds in addressing yourself to it.

The author and composer prior to 1909, such as Cohan, Sousa or Herbert, contributors of musical works in this country, never received a cent from the phonograph companies, and they were springing up throughout this nation, taking their works, engaging orchestras and stars, and putting them on wax, and sending them throughout the world. The phonograph companies were very powerful in Washington, to such an extent that there came into this fight Charles K. Harris, who, I believe, wrote "After the Ball", since gone; Harry Von Tilzer, and also into the fight came Augustus Thomas, Robert Underwood Johnson, all creators banded together, men who had a gift for writing songs, a book or play or novel or article. What was involved in this question? It was the first intrusion of the mechanization into taking and holding creative works without asking the man who created it if they could go [fol. 1281] ahead and use it, and they built up gigantic interests. There were a handful of writers, and the opponents were very, very powerful. Out of it came one of the most insidious things in American law—the price fixing

provision which was set out in the Act of 1909—a provision that the author and composer and his publisher by law could only get two cents for the creation of his brain on a phonograph record, but a phonograph company could pay Enrico Caruso \$150,000 a year, and the leading bands and orchestras of the United States had a free right to bargain. The phonograph companies put it in there that two cents was all an author and composer and his publisher could derive from the sale of the record. At that time, and it is very important here, the phonograph record was confined to the home. This magic instrumentality called radio was not conceived at that time, and in the deliberations of Congress, inasmuch as this was a record, that phonograph record at that time was part of an instrument to mechanically reproduce. No person living could read a phonograph record. These indentions would only speak when a needle was put on, and it was part of a machine. That was the start of the mechanization and of the utilizing of the works of creators of songs. Naturally those who wrote the songs of the country felt terribly. They were perfectly willing in those days, and they were the first to step forward to take this two cents, and that was the only compulsory license provision, I believe, up until a year or so ago, when it was put into some agricultural act. It was the first time in the history of this [fol. 1282] nation that price fixing was recognized in any part of our government, and it was an amazing commentary that it should be tacked on men and women who created the songs of the country.

Q. What happened, Mr. Buck, in 1914?

A. And from 1909 on—

Mr. Hotz: Go ahead with what you were saying.

A. In 1912 there started in this country the so-called cabaret. In 1913 it increased in volume and it broke out like a prairie fire throughout this country. You would go into a restaurant to eat and out in front of you would step a gal or a man or a quartet or a band in competition to the legitimate shows and enterprises in theatres built for such a purpose. Into this restaurant to lure patrons would come artists singing songs, and they would take the songs of mine from the Ziegfeld Follies, take the Victor Herbert songs out of his repertoire, take the popular songs created

by Irving Berlin and George Cohan, take Sousa's marches without ever asking anyone, just like the phonograph boys did. This new enterprise started in the restaurant business to lure customers into their establishments. There wasn't an author or composer in the United States, and the same condition exists today, who could engage an attorney, nor did he have the funds.

Q. Did you have a fund and were you able to do anything about it in 1914?

A. I could do nothing. I am going to answer the question you asked me. Victor Herbert had a sensational success [fol. 1283] on Broadway. This great, open-hearted, generous man called us together and said something should be done about this. They are taking the greatest songs of the country now, and it was a very insidious technique. They didn't charge admission at the door, but this was their creation, and one of the toughest things in this country, the so-called covert charge. Performers appeared on the floor and sang songs that they had pirated and which were created for musical play, and some of them cost \$200,000.

Mr. Hotz: We desire to object to the immateriality of the statements that have been made by the witness, and make this objection in this form, and request counsel to kindly put your questions to the witness and let him answer them as nearly as he can by questions and answers. We feel that much that has been said is immaterial, and that we could go on here and show the trials and tribulations many, many years ago, without getting down to what we are confronted with today.

Mr. Frohlich: I have tried to save time by not asking a lot of questions.

The Court: I think the witness is inclined to indulge in argument. Confine yourselves to the facts.

Q. Well, now, with reference to the American Society of Composers, Authors and Publishers, that was formed, you say, in 1914?

[fol. 1284] A. I was just reaching that point.

Q. That was an unincorporated society under the laws of the State of New York?

A. I think the Court is entitled to know why it came into existence.

Mr. Frohlich: We will get to that in a minute.

I offer in evidence plaintiffs' Exhibit Number 2, Chapter 609 of the General Associations Law of the State of New York.

Mr. Hotz: No objection.

Q. Mr. Buck, I show you this document and ask you what it is?

A. That is Articles of Association of the American Society of Composers, Authors and Publishers.

Mr. Frohlich: I will offer in evidence plaintiffs' Exhibit Number 3.

Mr. Hotz: No objection.

Q. I show you two documents, Mr. Buck, and ask you what these represent?

A. They represent the membership list of the American Society of Composers, Authors and Publishers, affiliated societies, and the Board of Directors and Officers and all representatives in the States of the Union.

Q. Is this a blue document?

A. The blue one is for the year 1937, and the last issue is 1939, August 1st. That is most pertinent in this case.

Mr. Frohlich: Offer in evidence plaintiffs' Exhibits Numbers 4 and 5.

[fol. 1285] Q. Mr. Buck, prior to 1914 did any of the users of American Music, to your knowledge, pay any author or composer for the public performance for profit with respect to those compositions?

A. No, sir.

Q. And was that one of the motivating reasons for organizing the American Society of Composers, Authors and Publishers?

A. Yes, sir.

Q. After the organization of that Society in 1914 was the Society able to get money from the users for the public performance for profit of these compositions?

A. The history is we didn't get the person in court. When we went in with the violation we met the restaurant owners of the United States.

Q. Were the restaurant owners organized into a trade association?

A. They were.

Q. What was the name of it?

A. I think it was—I would have to get a book; I can't recall. The record is there. The court records show it, with the opponents that confronted us.

Q. In other words, you say a test suit was brought of some kind?

A. Yes, sir.

Q. Were the restaurant owners represented by one counsel?

A. Yes.

Q. And who represented the group?

A. Yes.

Q. Was this case carried to the United States Supreme Court?

A. We lost the case in the lower court and it took three [fol. 1286] years and eventually it went to the United States Supreme Court, and the late Justice Oliver Wendell Holmes rendered a decision construing the Shanley case. That was the performance for purposes of profit, although there was an admission charged at the door by the indirect charge of the covert charge, and they put this charge on your check.

Q. That was the case of Herbert against Shanley?

A. Yes.

Q. After that decision came down in 1917 did you meet any other further opposition on the part of the users with respect to payment for these performing rights?

A. In the interim during these three years the picture houses throughout the United States utilized the same way of taking the music works of authors.

Q. Were these picture houses organizing trades and associations?

A. They were.

Q. Do you recall the names of some of the associations?

A. The Motion Picture Exhibitors of America and the Motion Picture Exhibitors of New York—they were organized in every state, and now they have a national organization and a state organization.

Q. A national and a state organization?

A. Yes, sir. Whom were we confronted with? We never met Mr. Shanley and never met the individual infringers. We were always confronted with an attorney like today, by the representatives of an association.

Mr. Riddell: Just a minute. I move to strike out the [fol. 1287] answer as not responsive to the question, and wholly argumentative.

The Court: Overruled. Part of the answer is clearly responsive.

Q. In the years 1917 on was the litigation between the American Society and users with respect to the attempt by the American Society to enforce the rights of its members?

A. It is continual right up to this moment; it never ceased.

Q. Did the motion picture theatre owners pay anything to the American Society for the use of the compositions in the theatres?

A. Not until forced to by the court action.

Q. How long did that take?

A. That took two years, I think.

Q. Did the motion picture owners pay anything to any of the individual authors, composers and publishers, members of the Society, during that period?

A. Never in their history.

Q. Did they pay anything to any author for performing rights, do you know?

A. Never in their history.

Q. Well, did the time come when the American Society on behalf of its members entered into license agreements with the owners of motion picture theatres in the United States?

A. Yes. When our rights were upheld by the court, then we negotiated with them.

Q. Now, in 1923 was radio the coming actor?

A. It started in 1921, yes.

Q. By 1923 had it reached any proportion?

A. Yes, very much of a proportion.

[fol. 1288] Q. There were a number of radio stations in existence in 1923?

A. Yes.

Q. Were these radio stations operating throughout the United States?

A. They were.

Q. Were they utilizing musical compositions for the purpose of public performance at profit?

A. They were.

Q. Were they utilizing the compositions of the members of the American Society?

A. They were.

Q. Did they offer to pay to the American Society, or to any individual members of the Society, any compensation for the public performance for profit?

A. No, they did not. The picture owners resisted.

Q. Did the Society demand of them that they pay compensation for these performing rights?

A. They did.

Q. Was that demand acquiesced in?

A. No.

Q. Was there litigation on the subject?

A. The first case brought by the American Society of Composers, Authors and Publishers was in the State of New Jersey and tried before Federal Judge Lynch, who upheld the Society. That was constituted a public performance for profit. The broadcasters said, like everybody else, "We are not infringing here."

Mr. Biddell: I move to strike out that portion of the [fol. 1289] answer beginning, "The broadcasters, just like everybody else", from there on, as not responsive.

The Court: It may be stricken out.

Q. Were the broadcasters organized in any groups in 1923 and subsequent years?

A. Yes.

Q. Can you give us the names of the groups?

A. The original association was the National Association of Broadcasters which is in existence today, and the first president was Gene McDonald of Chicago, and then there was Paul Klugh, executive chairman, who now works in Chicago. I happen to know the gentlemen met in Washington, where they went down to change the law, to have the two cents compulsory apply to broadcasters.

Mr. Hotz: Objection to as hearsay, and as not responsive. I suggest that counsel confine Mr. Buck to his specific questions.

The Court: The volunteer part may be stricken out. Overruled as to the rest.

Q. Now, Mr. Buck, you said there was litigation between the Society and the broadcasters after 1923?

A. That is right.

Q. Was the National Association of Broadcasters represented by its own counsel?

A. Yes.

Q. What form of opposition did the Broadcasters take with respect to the Society, in addition to litigating their rights in others?

[fol. 1290] A. Well, some of them first didn't use the American Society works on their broadcasting stations, namely, the R. C. A., headed by Mr. David Sarnoff, for some time. He operated WJZ and some of his stations, without utilizing the works of the American Society.

Q. But now did a time come when the activities of the Broadcasters took other shape?

A. I didn't hear the last.

Q. Did the time come when the activities of the Broadcasters were extended and took other shape? Did they do anything else?

A. We took the Broadcasters to court and were upheld by the courts, and they did the next thing to change the law.

Q. You mean with respect to the copyright law?

A. To change the basic copyright law by a bill introduced by Senator Dill of Washington.

Q. What year was that?

A. In 1924.

Q. Were hearings held before committees in Washington?

A. Yes; numerous committees in the Senate and House, and one joint hearing.

Q. Did you attend those hearings?

A. I did.

Q. Who appeared in favor of the bill which would affect the copyright law?

Mr. Hotz: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. The National Association of Broadcasters.

[fol. 1291] Q. Are you able to tell us without looking at any document from your own memory, what particular bills were introduced and who appeared in favor of those bills against the interest of the American Society?

A. The first bill was the so-called Dill bill introduced by the Broadcasters in 1923. There was the introduction in

Congress of a revision of the Copyright Act known as the Vestal bill, and there were long extensive hearings that lasted a year and a half. Vestal of Indiana happened to be chairman of the committee. The Broadcasters appeared then as the National Association of Broadcasters. And if it is so desired, I will put the counsels' names in the record.

Q. I want you to tell us. Are you able to do it from memory?

A. The next important bill that the users of music presented was the Duffy bill, introduced in the United States Senate by Senator Duffy of Wisconsin, for revision of the Copyright Act. It was known in Washington as the users bill.

Q. Mr. Buck, who prepared this document here, do you know?

A. This was prepared by our legal staff, and is a record from 1924 on of appearances at all hearings in Washington, on every bill pertaining to the change of the Copyright Act.

Q. Will you refresh your memory from that document and tell us who appeared in 1924?

A. The first bill down there to change the Act from 1909 was brought down there by the original president, Gene McDonald of Chicago, and Paul Klugh, executive chairman. The bill was introduced by Senator Dill on the 9th day of [fol. 1292] April before the United States Committee on Patents, and the appearance there was Mr. McDonald, Mr. Klugh, and Mr. Charles Tuttle.

Q. He is a well known lawyer in New York City?

A. He is a very distinguished attorney, and at one time Federal District Attorney.

Q. Will you look at the other sections of this document, which refer to hotels and motion picture people with reference to these communication bills, and tell us who appeared on behalf of any other organization?

A. On the same Dill bill introduced, which would eliminate from the Act the all-important line, "public performance for profit," which the Society operates under for the protection of its members. Mr. Frank Boland for the Hotel Men's Association appeared at the same time.

Q. Did anyone else appear at that hearing?

A. At that hearing for the motion picture industry there appeared Mr. Sidney Cohen, who was at that time the head of the Motion Picture Theatre Owners Association, and Mr.

Samuel Handy of the Motion Picture Exhibitors of America, in the 68th Congress, in the first session.

Q. By the way, that bill didn't pass, did it?

A. It didn't; it was defeated.

Q. Did that bill affect the minimum damage clause of the act?

A. Yes; it attempted to strike it out.

Q. What was the clause?

A. Provision of \$250.00 as a damage clause which is in the act.

[fol. 1293] Q. After 1924 were any other bills introduced in Congress?

Mr. Hotz: Just a minute. We object to that as incompetent, irrelevant and immaterial. We have no objection to the present Copyright Act being referred to or introduced in evidence. I can't see the necessity nor the materiality for the various attempts they have made in Washington, D. C. to change the Copyright Act, and take it up year by year. It stands today on the statute books. The courts have universally held what the rights of the various authors and composers are under that act. There is no doubt about it, and there is no controversy here. This is not an infringement suit. There is nothing about infringement in this action. This is an action for a plain, ordinary, simple injunction to restrain the enforcement of a certain bill for unlawful monopoly in the State of Nebraska. I think, therefore, I will have to insist that they do not encumber the record, and permit this immaterial testimony to go in.

The Court: Overruled.

A. Yes.

Q. After 1924 were any other bills proposed to Congress which affected the Copyright Act?

A. Yes, sir.

Q. Will you be able to refresh your recollection, Mr. Buck, from looking at this document and tell us when the next bill was introduced?

[fol. 1294] A. The next important bill was introduced by Senator Duffy in the United States Senate. Numerous bills were dropped into the basket in 1924, but they didn't arrive at a crystallization to the extent that a committee gave a hearing to either side. The basket was filled with bills, but the patent committees of the House or Senate did not

hold extensive hearings until the Duffy bill was introduced by Senator Duffy—the extensive hearings were held then.

Q. Did you attend the hearings?

A. Every one of them.

Q. Who appeared in favor of that Duffy bill?

A. The same gentlemen; the National Broadcasters, the Hotel Owners of America, and the Motion Picture Exhibitors of America.

Q. Did the Duffy bill affect the provisions of the Copyright Act with respect to minimum damage?

A. It did; it moved to strike out the \$250.00 clause, it moved to strike out the extension, more or less. An admission was charged at the door of a cabaret or restaurant. It was an entire user bill. I trust the Court will understand when I say "user," I mean our opponents again, who created it.

Q. Did the time come when legislation was introduced in the various states throughout the country which affected the rights of the composers, authors and publishers of musical compositions?

A. Yes, sir.

Q. Can you tell us the first bill that was proposed or passed with respect to such legislation?

[fol. 1295] A. The first bill introduced was in the State of Washington three years ago.

Q. Prior to the introduction of a bill which affected the copyright, did the State of Washington or the officials of that state take any action with respect to copyright owners who were members of the American Society of Composers, Authors and Publishers?

Mr. Hotz: Just a minute. Object to that as incompetent, irrelevant and immaterial, and not within the issues of this case. I am not prepared to go into what happened in Washington.

Mr. Frohlich: I have a decree of the State Court of Washington, and the American Society was affected by this decree. I have a certified copy of it, by Judge Wright, in which he adjudicated the rights of the Society. Its nature and character had been attacked within that state.

I want to show by this witness what was the nature of this attack culminated in this decree. I want to show here

that when this bill was passed, the bill now seeking to be enacted in the Statutes of the State of Nebraska, it wasn't the first bill of its kind and there was reason for having had that bill proposed in the State of Nebraska. There were some people who were interested in that bill. It was the culmination along the line of attack, first in the courts in the east and then in the halls of Congress, and when there was failure in the halls of Congress there was an attempt [fol. 1296] to introduce bills in the forty-eight States of the Union to emasculate the rights of these composers, authors and publishers, and this is one of the bills. I think the history of this bill or the reason for its passage is of some interest to the Court. The Court is not expected to sit in the dark and view things in a vacuum. They say this is affected with public interest, and I say it is a private interest of users. I think it is revealing, your Honors, on that point.

Mr. Hotz: If counsel has a decision of the court he wants to cite, it seems to me it is a matter for argument as to what other course might have held under similar bills and similar circumstances. That isn't a matter for the witness to testify to. Of course, the American Society has had litigation. In fact, the name Gene Buck appeared before the court more than any other individual. They have got records here to show eighty-eight suits pending in Nebraska in the two jurisdictions we have here. I can't see the materiality of that. I don't see why we have to go into the fights they had in Washington and Florida and Montana, and different things. Our Nebraska bill, we can show it is materially different.

The Court: Sustained for the present.

Mr. Fröhlich: Offer in evidence plaintiffs' Exhibit Num- [fol. 1297] ber 6, being the decree of Judge Wright, a certified copy of it.

Mr. Hotz: We object to it as incompetent, irrelevant and immaterial, and not within the issues of this case. It merely purports, your Honors please, to be a decree in a case.

The Court: Sustained.

Mr. Frolich: I offer in evidence at this time, your Honors, two laws of the State of Montana, one passed in 1937 and one in 1939, very much similar to the statute in suit here. I merely want to offer certified copies of these laws in evidence.

Mr. Hotz: We object to those as incompetent, irrelevant and immaterial, having no bearing on the issues in this case, and encumbering this record. The laws of Montana are in their statute books.

The Court: This Court will take judicial notice of all these laws. Objection sustained.

Mr. Frolich: They will be marked plaintiffs' Exhibits Numbers 7 and 8.

I also offer in evidence similar laws in the State of Washington, the State of Tennessee and the State of Florida, being Exhibits Numbers 9, 10, 11 and 12.

Mr. Hotz: Let the record show the same objection.

The Court: Objection sustained.

[fol. 1298] Q. Are you an officer of the American Society of Composers, Authors and Publishers?

A. I am the president.

Q. And how long have you been president?

A. Sixteen years.

Q. I show you this document and ask you whether you recognize the signatures?

A. I do. That is a contract for agreement between myself and the American Society as a member.

Q. What is the date of that contract?

A. The date of that is June 25, 1935. That is a renewal agreement.

Mr. Frohlich: Offer in evidence plaintiffs' Exhibit Number 14.

Mr. Hotz: No objection.

Mr. Frohlich: May I substitute a photostatic copy of that?

The Court: Yes, and the original may be withdrawn.

Q. Roughly, about how many publisher members are there in this Society?

A. About one hundred and twenty-three or one hundred and twenty-four.

Q. How many writer and composer members?

A. About one thousand and sixty or seventy.

Q. For each and every one of those publisher members, author and composer members, have executed similar contracts to Exhibit Number 14?

A. Exact contracts.

[fol. 1299] Q. Now in force and effect?

A. The same contract between the publisher member and composer, and they all sign the same kind of a contract.

Q. When in point of time do they expire?

A. That contract expires December 31, 1940.

The Court: The other contracts also expire at the same time?

The Witness: They all do. They have been renewed for five-year periods all through the Society's history.

The Court: And the same period? They date from the same day and renewed at the same time?

The Witness: Yes.

The Court: Not each one has a five-year period, has it?

The Witness: All of them up to the year 1921. From 1914 we just had one contract. We had one contract at that time, and it had a continuity from 1914 to 1921. Then starting at the year 1921, from then on, it was for every five years. At the end of that five years all members in the Society signed a renewal agreement for a period of five years.

Q. Mr. Buck, has the American Society of Composers, Authors and Publishers any contractual relations with other societies elsewhere in other countries?

A. It has some thirty-six nations.

Q. Among them is there one society in France?

[fol. 1300] A. The French Society and British perform the rights of the Society. Every country in Europe, with the exception of Russia.

Q. Now, I show you photostats of contracts between the American Society and European societies, and ask you whether these photostats are true and correct copies of the originals, and whether these contracts are presently in existence?

Mr. Frohlich: For the information of the Court, I have the originals in court, but I would like very much to take them back.

A. These are the photostat copies.

Q. Are the contracts all in force at this time?

A. Yes. I signed them.

Mr. Frohlich: I will offer in evidence plaintiffs' Exhibit Number 15 as a group and as one exhibit.

Mr. Hotz: You have them in once in your depositions.

Mr. Frohlich: I believe so, somewhere in the depositions.

Mr. Hotz: Let us not get them in here twice. We have no objection to them.

Q. Now, Mr. Buck, does the Society deal in any sheet music?

A. No, sir.

Q. Does it have any interests whatever with reference to the publication of musical compositions?

A. No, sir.

Q. Does it purchase or sell any sheet music?

A. No, sir.

[fol. 1301] Q. Does it print or publish any musical composition?

A. No, sir.

Q. Does the Society own any copyright?

A. No, sir.

Q. Has it ever owned any?

A. Never in its history.

Q. Has it ever traded in any shape, manner or form in sheet music?

A. It has not.

Q. In what is the Society interested?

A. The author, composer and publisher vests in the Society the so-called "small performing right"—the right to publicly perform for profit.

Q. Is that the only right in which the Society is interested?

A. That is the only right they have.

The Court: Why have somebody testify about this if it is already in? It will probably speak more accurately than the witness' recollection.

Q. How does the Society license the compositions of its members to users of these composition for the purpose of public performance for profit? Tell us the procedure.

A. It issues a blanket license. If a theatre license is predicated on the seating capacity of the house, it is so much per seat per year. The broadcasting station license is predicated, first, on the wave length of the station, the location of the station, the sum area of its listening public, and the power granted to them by the United States Government.

[fol. 1302] Q. As to a dance hall, what is done?

A. If a dance hall, it depends on its location and the size of it; if a restaurant, also its location and the size of it.

Q. Now, on September 1, 1937 did the Society have in force various contracts in the State of Nebraska with users of music in that state?

A. They did.

Q. I show you this group of contracts—photostats of these contracts, and ask you whether those are the contracts that were in force with the users of musical compositions in the State of Nebraska, May 17, 1937?

A. Without going into detail with every one of them, yes, they are the photostatic copies.

Mr. Frohlich: I will offer in evidence plaintiffs' Exhibit Number 16.

Mr. Hotz: While we have no objection as to the materiality and relevancy of this bunch of photostatic copies of the contracts in the State of Nebraska, it encumbers the record unduly. They have set out their complaint the users they have in their respective counties, and then attached to the bill of complaint a typical contract, and that so far as we are concerned, even though we have denied it, would be sufficient, except one contract we have called for, and that is with the radio station coupled up with the newspaper at Norfolk.

[fol. 1303] Mr. Frohlich: My reason for offering them is primarily that these contracts are very vitally affected by the statute. This statute abrogates each and every one of those contracts.

The Court: The question is whether they are already in the record.

Mr. Frohlich: They are not, your Honors. We simply attached one typical contract, a radio contract, a hotel contract. I think all the records ought to be in evidence.

Q. Mr. Buck, did you at my request have your office tabulate the revenue that was taken in by the American Society of Composers, Authors and Publishers from the users of music for the purpose of public performance for profit within the State of Nebraska from the year 1928 down to June 30, 1939?

A. I did.

Q. I show you this document and ask you whether that is the tabulation that was made?

A. It is.

Q. Is that a true and correct tabulation from the books of the American Society?

A. It is.

Q. And accurately and truly represents the money that came in for the years indicated, in the manner indicated, is that right?

A. That is right.

Mr. Frohlich: I will offer in evidence plaintiffs' Exhibit Number 17.

[fol. 1304] Mr. Hotz: No objection.

Q. Did you also prepare at my request a schedule of the actual cost of operation and commissions paid by the Society within the State of Nebraska from the year 1932 to 1937?

A. I did.

Q. I show you this tabulation and ask you whether that is a true and correct tabulation taken from the books of the American Society?

A. Yes, sir, that is accurate.

Mr. Frohlich: I will offer in evidence plaintiffs' Exhibit Number 18.

Mr. Hotz: No objection.

Q. Mr. Buck, could you furnish the figures for 1938 and the first half of 1939?

A. I would be very glad to do it.

Mr. Frohlich: We will furnish it and bring it up to date.

Mr. Hotz: Would you just as a matter of simplification add that onto Exhibit Number 18? You could do it by pencil. And you will state, Mr. Frohlich, that will be the accurate records of your Society?

Mr. Frohlich: That is correct.

Q. Now, Mr. Buck, were you in 1914 able to protect your rights with respect to public performance for profit of your compositions throughout the United States?

A. No, sir.

Q. Were you financially in a position to hire investigators [fol. 1305] and lawyers to seek out infringement and so on?

A. No, sir.

Q. Have you ever been able yourself personally to protect yourself with respect to public performance for profit of your rights?

A. Not without an association.

Q. Does that same situation hold true with the other members of the Society?

A. All of the members.

Q. Now, if you attempted to protect your own rights without the help of any organization or association with the State of Nebraska, what would you have to do as a practical matter, and with your knowledge of the entertainment profession, to safeguard and protect your rights for public performance for profit?

Mr. Hotz: We object to that as not within the issues of this case. This bill has nothing in it nor has the complaint raised any issue, nor is there anything in our answer or the state law to cover the object of any organization for the purpose of policing their rights covering infringement. They can institute any sort of procedure they wish in connection with that. It is not within the bill and not within the issues. The Society operates in this state without any handicap on the matters which the attorney has directed to the attention of the witness.

The Court: I think the witness may state briefly.

[fol. 1306] Q. You may state, Mr. Buck, what you would have to do to go about it?

A. The first thing you would have to do is to hire an investigator in the State of Nebraska to investigate all establishments.

Q. Would one investigator be sufficient for 391 establishments?

A. It couldn't be done.

Q. How many investigators would you have to have for 391 establishments?

A. Conservatively three or four.

Q. And what salary would you have to pay a man to go around and investigate these establishments?

Mr. Hotz: I object to that as immaterial.

The Court. Sustained.

Q. You would have to pay his salary?

A. Yes, sir.

Q. If any infringement was found, would you have to engage a lawyer?

A. Yes, engage a lawyer to bring suit in a court of law.

Mr. Hotz: Object to that as immaterial and calling for a conclusion of the witness, and a self-evident fact that lawyers have to be paid.

The Court: It has been stipulated the amount in controversy exceeds \$3,000.

Mr. Frohlich: I want to show the helplessness of an individual under this act.

Q. Would other writers and composers have to do the same as you, if they were to proceed individually to protect their rights within the State of Nebraska?

[fol. 1307] A. Every author and composer in this country would have to do the same thing individually.

Q. And every publisher would have to do the same thing?

A. And every publisher would have to do the same thing.

Q. If an author and composer resides many miles from the State of Nebraska, it would impose a greater hardship on them, would it not?

A. It is an impossible task; it is dealing with an impossibility that any single individual could cover the violations of his works in a state.

Q. When you write a musical composition and have it published, is it frequently the case that your compositions have been manufactured by radio and phonograph companies or piano roll companies into mechanically reproduced compositions?

A. Yes.

Q. In other words, disc records and musical rolls have been made from your compositions from time to time?

A. That is right, because different rights flow from the Copyright Act.

Q. And one of the rights is to make a mechanical reproduction of your composition?

A. Yes, sir.

Q. Now, when these mechanical reproductions were made you were paid under the compulsory provision of the Copyright Act at the rate of two cents a disc record or piano roll, were you not?

Mr. Hotz: Objected to as not within the issues of this case, and having been answered by the witness, and this act applies to vocal and instrumental musical compositions. [fol. 1308]

Mr. Frohlich: Now, in the first place it is very important to the issues in this case, your Honors, because one of the

rights we claim is completely destroyed by this statute, is the right of public performance for profit that would flow from the public performance for profit of a mechanical disc or piano roll, because the act expressly applies not only to played music but every copy of the composition manufactured. It has been carefully drawn to bring in every form of reproduction of that musical composition. It is our contention that when disc records are made they are made by others whom we don't control, and are forced to put on a price schedule as called for by the act, and these people can take the records and bring them into the State of Nebraska and have them perform, and the copyrighter doesn't get a penny for it, and he can't collect anywhere within the state for that performance. That is very vital here, the construction of this part of the act.

Mr. Hotz: Your Honors, that statement isn't altogether correct. In fact, no part of it is correct. This act doesn't militate against anything of the sort, nothing of the kind. Any composer or author or publisher, any of the 123 publishers, that have rights, certainly this act doesn't exempt [fol. 1309] them from infringement. The only thing it does prevent is a monopolistic organization from coming into this state and fixing a price, if it can. That is all there is to this act, and unless they can show by this witness in this question that this disc and musical records are in some way connected up with the act, it is absolutely immaterial. I can't find it in the act.

The Court: Read the question.

(Question read).

The Court: Overruled.

A. Yes, sir.

Q. And under the compulsory provision of the copyright all other writers and composers and publishers throughout the country of musical compositions receive compensation under this compulsory license provision of the Copyright Act?

A. Equal.

Q. You, of course, know that the act provides that where the copyright licenses one record maker to make a record, then any other record maker in this country has a right, on paying two cents a record, to make as many as he pleases?

A. One phonograph company, that is right.

The Court: That is putting into the mouth of the witness what you say the law is.

Q. Isn't that the procedure in the musical profession?

A. It is the practice that the minute the author and composer and publisher gives to one phonograph company in [fol. 1310] the United States the right to reproduce that song on a record, every other company in the United States can also make them at the same price.

Q. If you, Mr. Buck, were to grant somebody the right to reproduce a record of one of your compositions and other disc or piano roll manufacturers under this compulsory license provision of the act, made, manufactured discs and piano rolls of your compositions, could you in any shape, manner or form compel those manufacturers to put on the price of their records or rolls any schedule with regard to the use of public performance for profit within the State of Nebraska?

Mr. Hotz: Object to that as calling for a conclusion of the witness, and leading.

The Court: Sustained.

Q. Were many of your compositions recorded on the disc records?

A. Numerous ones.

Q. Can you give us the names of some of your compositions?

A. "Hello Frisco", "Tulip Time", "Sally Come Back In The Alley", "Garden Of My Dreams", and "No Foolin".

Q. And were many disc records made from the compositions you have just mentioned?

A. Many.

Q. Were disc records made by many manufacturers?

A. Many.

Q. Were many disc records sold throughout the United States?

A. They were.

Q. And some of them are now being sold throughout the United States?

A. Yes, sir.

[fol. 1311] Q. Have you any control over any of these records?

A. I have not.

Q. Are they in your possession?

A. No.

Q. Is there any way in which you can compel anyone to affix any price on them?

A. No, sir.

Q. Would you be willing to have any manufacturer of rolls or records fix a price on the rolls or records with respect to public performance for profit?

Mr. Hotz: I object to that as calling for a conclusion of the witness, and immaterial.

The Court: You may answer yes or no.

A. Yes.

Q. Read the question.

(Question read).

A. Well, in a sense I naturally would recapture the control. That is what I meant when I said yes; that is what I am addressing myself to.

Q. Assuming you now have to operate under the Nebraska Statute, and records are made from your songs, would you be willing to have some manufacturer put on the face of the record any schedule of prices for the public performance for profit?

Mr. Hotz: Object to that as not within the issues of this case, and not within the Nebraska Act, there is nothing of that sort in there.

The Court: Overruled.

[fol. 1312] A. No.

Q. Mr. Buck, do you know something about the show business?

A. I do.

Q. Not only did you have experience with Ziegfeld, but did you have experience of your own as a producer of plays?

A. I produced plays myself.

Q. And have you kept in touch with the general profession of producing plays throughout the country?

A. Yes.

Q. Has there been any marked decline in the production of plays since the advent of radio?

A. Yes, a great decline in the actual production of plays in the theatre. Theatres are closed from Maine to California outside of a few major towns.

Q. I show you a schedule prepared from a trade paper called "Motion Picture Herald", dated November 17, 1934,

and ask you whether you have ever seen that schedule before?

A. Yes, I have seen that before.

Q. Does that schedule purport to set forth the decline in the production of musical plays?

A. Yes.

Q. For a period of years?

A. Yes; dramatic and musical.

Q. Would you say you agree with it, and that it is accurate and correct from your experience in the show business?

A. Yes.

Mr. Frohlich: Offer in evidence Plaintiffs' Exhibit Number 19.

[fol. 1313] Mr. Hotz: We object to this exhibit Number 19 because it has no bearing upon the issues in this case. There is nothing in the complaint and nothing in the answer or bill about it. It is a page taken from the "Motion Picture Herald" and purports to give the Broadway stage from 1920 to 1934, showing the relative declines and increases and so forth in connection with performances. The bill does not attempt to reach public performances of that type; that is, dramatic performances.

The Court: In any event it is hearsay and there is no foundation laid. Sustained.

Q. You know something of the music business, too, don't you?

A. I do.

Q. In your sixteen years as president of the American Society you have personally come in contact with every phase of the music business?

A. Yes, sir.

Q. And you know the history of a great many of the famous songs of the country?

A. Yes, sir.

Q. And what they did financially?

A. Yes, sir.

Q. How many copies were sold?

A. Yes, sir.

Q. Did you cause a compilation to be made of songs that sold in excess of a million copies?

A. I did.

[fol. 1314] Q. Before I show you that compilation, let me ask you whether from your knowledge and experience since

1927, 1928 or 1929, or about that period, there was any falling off in the sale of sheet music in the United States?

A. Tremendous.

Q. And at the time that sheet music was falling off was radio becoming more prevalent and popular?

A. Yes.

Q. And did the time come when radio reception was possible in many millions of homes in the United States?

A. There are thirty million sets operating tonight in the United States.

Q. In your opinion, based upon your knowledge and experience did the operation of these radio sets affect the sale of sheet music?

A. It did.

Q. In what way did it affect it?

A. Well, it affected it primarily in the way of pianos and the desire of people to buy sheet music. The writer of songs first wrote the songs, and besides expressing himself it was his desire to make a living primarily. To make that living his living was derived first from the sale of sheet music and secondly from ~~phonograph~~ records. Since the invention and tremendous vogue and popularity of radio, sheet music has fallen off and piano stores have been closed from Maine to California. There is a little economics involved in there too. People are not going down on the corner and buy four or five sheets of music when they can turn on the [fol. 1315] radio for nothing and hear the greatest artists in the world. The same thing happened to the phonograph records, although at the moment they are coming back, and owing to this recent craze of so-called "swing music".

Q. Now, Mr. Buck, did you at my request prepare a compilation of musical compositions that have grossed in sales a million or over?

A. I did.

Q. I show you this compilation and ask you whether that is true and correct?

A. Yes, that is true.

Q. Made upon your own personal knowledge?

A. Yes.

Q. And from information received by you from the various publishers?

A. From the publishers who publish the music, and also the composers—a royalty statement.

Mr. Frohlich: Offer in evidence plaintiffs' Exhibit Number 20.

Mr. Hotz: It is interesting, but has no materiality.

Q. Mr. Buck, do you know of any musical composition that sold a million copies within the past five years?

A. No, sir; there isn't any.

Q. In the musical profession they endeavor to write songs that are very popular hit songs, don't they?

A. That is right.

Q. And there have been numerous hits in the last ten years, haven't there?

[fol. 1316] A. Many of them.

Q. Have any of those hits grossed a million copies of sheet music, to your knowledge?

A. No, sir.

Q. How many copies a day, as a rule, are sold of a hit song?

A. You means copies a day, or today?

Q. I mean at the present time.

A. At the present time a hit is considered one hundred thousand copies.

Q. In your opinion and from your knowledge of the business, what is that decrease due to in that sale of sheet music?

A. We naturally believe it is owing to the use of radio—we believe that.

Q. Is radio used a great deal in music?

A. Yes.

Q. When it is pleasing and entertaining is it played frequently over the radio?

A. There are nearly seven hundred broadcasting stations in the United States, and with the magic of its expression on a hook-up you can have a song hit tonight, and where ordinarily prior to the great popularity of the radio, a song would live ten or twelve years—it would take two years at least to go across the country—tonight Bing Crosby or John Boles will sing a song, and instantaneously, conservatively, thirty million people will hear him sing it. Consequently the song for a short time is a sure hit, but today it does not last six weeks. There is not a song hit in America that can last six weeks.

[fol. 1317] Q. Does this situation affect the author's royalty from the sheet music?

A. It naturally does.

Q. Are the authors' royalties today as high as they were in the days before the advent of the radio?

A. They have dropped seventy per cent.

Q. So that today the writer of a musical composition cannot look to more than thirty per cent on the hit number of what he could get fifteen years ago?

A. Not sheet music.

(Whereupon an adjournment was taken until 1:30 o'clock P. M.)

Mr. Te Poel: The complainants move that the case be dismissed as to Grace Ballard, formerly County Attorney of Washington County, Nebraska, owing to the fact that she has recently departed from this life.

(Thereupon Mr. Gene Buck resumed the stand for further direct examination).

By Mr. Frohlich:

Q. Now, Mr. Buck, prior to 1914 what were the main sources of revenue that an author and composer derived when he wrote a composed musical composition?

A. The average song writer, so-called popular song writer's revenue was derived primarily from sheet music and phonograph records, but Victor Herbert, Jerome Kern, Berlin and myself, we were the men who wrote musical plays. Like I draw royalties on the Follies, and Herbert on Irene and numerous musical works.

[fol. 1318] Q. In other words, the writer or composer who wrote or composed musical compositions which appeared in musical plays, he was known as a production writer?

A. Yes, sir.

Q. And a writer who wrote and composed musical compositions to be sold to the public was known as a popular writer?

A. Most of the members of the American Society today are popular writers.

Q. Does the Society also have in its membership production-writers?

A. Yes, sir.

Q. Now, prior to 1914 the popular composer had two sources of revenue, the sale of sheet music and the compensation from the mechanical records, is that right?

A. That is right.

Q. A production writer had the same revenue, in addition to which he also received revenue from the production of his plays, and royalties based upon the office receipts?

A. That is right.

Q. After 1914 and down the years has that picture changed any way?

A. Yes, tremendously.

Q. Very briefly, what change has there been?

A. Well, the change has been with the popular song writer. As I stated here this morning, his income from the sale of sheet music has dropped eighty per cent, and dropped as far as phonograph records, ninety per cent. Now it is on the rebound a little bit on account of Goodman and [fol. 1319] like swing orchestras. Take the production writer and just look at the picture of the United States today. There aren't ten musical comedies playing in the United States today, and there are not three playing in New York City. When I was in the Follies, at this time of the year thirty-five musical plays would be produced.

Q. Has the reduction in the production and the amount of musical plays affected the production writer today?

A. Yes.

Q. What is the cause of this reduction in musical comedy production?

A. Owing to the invention of the radio. Along comes the radio, this magic instrument, as I say, and it brings into the home great singers, and the theatre can't compete with that. If I produce a show tomorrow night and engage Bing Crosby to sing, I can't pay his wages that the sponsors of a radio program will pay Crosby to sing before a vast audience, whereas if he were playing in my theatre I would have only twelve hundred or two thousand seats.

Q. Now, Mr. Buck, in 1914 the revenue derived by the writer, both popular and production writer, from performing rights, was, as you testified, practically nothing, is that right?

A. True.

Q. Since 1914 has the revenue from the public performance for profit of these writers, increased?

A. Yes, it has.

Q. And where does that revenue come from today?

A. From the public performance for profit. In fact, to be candid with you, the only outcome and the only outlook a

[fol. 1320] composer and author has today for his initiative in creating public performance for profit is in the licensed establishment. If sheet music is gone, if the phonograph record is gone, what is the incentive for a man gifted to sit down and write?

Q. And in what manner is this revenue from the public performance for profit now derived by the writers of popular and production music in the United States; where does it come from?

A. It comes from the American Society; that is the chief source of revenue for any composer and author in the United States.

Q. So that if the revenue from the public performance for profit derived from the American Society is lost, then is it your testimony that the authors and composers of music today would be without any substantial revenue whatever from any source?

A. With thirty-five years in the business as a writer and composer, and with my vast knowledge as president of this Society for sixteen years, yes, sir. That is all he has to look for.

Q. I show you a tabulation made up by your office at my request and ask you if this tabulation truly and accurately represents the number of licenses issued by the American Society to establishments throughout the country since 1922, in each and every state?

A. It does.

Q. Will you please look at that tabulation and give us the [fol. 1321] total establishments now licensed by the Society in the year 1939?

A. In the year 1939, as of June 30th this year, the total licensed establishments of every radio station, motion picture theatre, dance hall and restaurant in the United States totaled 30,824 as of this day.

Mr. Frohlich: I offer in evidence plaintiffs' Exhibit Number 21.

Q. I call your attention, Mr. Buck, to the fact that this tabulation commences with 1922. Did the Society issue any licenses to users prior to 1922?

A. Yes, sir.

Q. Many licenses?

A. Yes.

Q. Between 1914 and 1921 did the American Society issue many licenses?

A. Not many.

Q. As a matter of fact, it didn't obtain any substantial revenue until about 1922, isn't that right?

A. That is true.

Mr. Frolich: I would like to offer in evidence plaintiffs' Exhibit Number 22, being a schedule which shows the diminution in the sale of sheet music and the diminution in the sale of phonograph records in the United States from 1927 down to 1933, taken from the records of the Department of Commerce and incorporated in the 1936 hearings on the copyright bill. Is there any objection to its competency?

[fol. 1322] Mr. Hotz: No, we wouldn't make any objection to the competency of it, but my objection to it is that it is not down to date.

Mr. Frolich: I couldn't obtain anything later.

Mr. Hotz: Therefore it has no probative force, as being too old and immaterial.

The Court: Have it marked as Exhibit Number 22.

Mr. Frolich: That is all.

Cross-examination.

By Mr. Hotz:

Q. Now, when the courts in their various holdings discussed the distinction between public performance rights and ordinary sale rights for sheet music and so forth, your organization then became active in the protection of the public performance rights, is that true?

A. That is right, sir.

Q. And at the present time your organization confines itself almost exclusively to the collection of money from the users of vocal and instrumental music performed for public rights; that is what you call public performance rights?

A. Primarily the protection of its members.

Q. I understand that, but that is something else. The protection from the infringement is another thing.

A. Yes, sir, but that is what brought the Society into existence.

[fol. 1323] Q. That is one of the purposes of your Society, to protect your members from infringement?

A. To stop this wholesale piracy.

Q. The way you do that is to have an agent and organization in each state in the Union who looks after and detects infringements of public performance?

A. That is right.

Q. Just explain to the Court what you mean by public performance rights and what people in the State of Nebraska generally are subjected to the payment of fees for public performance rights.

Mr. Frohlich: I really object to that, your Honors, on the ground that it calls for a legal conclusion on the part of the witness.

The Court: Let him answer.

A. I would be very happy to answer that. There are ten broadcasting stations operating in the State of Nebraska tonight. If the broadcasting station operates in this state tonight that is not operating for purposes of profit, this Society gives them a free license. Out of 700 broadcasting stations in the United States there — about seventy universities and churches, and as long as they are not opening their stations for the purposes of selling time for a five minute spread or spot announcement, or for a shorter period, or a half hour, the Society is perfectly willing to give its entire catalog to any municipal school or university or any broadcasting station that is not operating for purposes of profit. If that station sends out salesmen and they go to [fol. 1324] furniture stores and insurance companies and to national advertisers to dispose of its time, that is when the Society asks that station to take out a license.

Q. Now, then in addition to the radio, what else is there?

A. The next phase of activity in this state would be the motion picture theatres in the state who publicly perform music for profit.

Q. And the hotels?

A. Yes. We also license the picture houses, and it is predicated on the number of seats in that picture house. The next group in that would be the dance halls in the State of Nebraska. After all, a dance hall has nothing but the floor and music.

Q. They pay licenses?

A. They take out a license predicated on the size of the dance hall and how much usage of music there is. The next

is the hotels. If a hotel doesn't use music, we do not ask for any license, but if the hotel takes a name band orchestra and goes into the show business and uses our music for purposes of getting the public into the cocktail rooms and to dance, then we ask them to have a license.

Q. Then in addition to the hotels and dance halls, what about the amusement parks and that sort of thing?

A. If that amusement park is operating for purposes of profit rather than space and luring customers in there, they take out a blanket license with the Society. May I say to you, it is very cheap.

Q. Do you mean then for your interpretation of the public [fol. 1325] performance for profit is any user of music that performs for the public where he might derive benefit from the playing of the music?

A. Where he wants to get the public into his place and do business and utilize music.

Q. Then in the hotel room, where they have music come into the room through broadcasting, how is that handled?

A. We won a decision in the Supreme Court of the United States on that question, and have never charged.

Q. That I am trying to get at is that the hotel rooms also pay that?

A. At the moment we are not collecting from them.

Q. What do you do in connection with the telephone company or branch of the telephone company that has that service?

A. We have nothing to do with the telephone company, sir.

Q. But I mean they have the connection? o

A. The remote control by the telephone company from the Broadcasting station into hotel rooms?

Q. Yes.

A. We took the question into the United States Supreme Court and they upheld our rights, but we haven't exercised our right at this time.

Q. Now, how about such things as volunteer fire departments, the American Legion halls and things of that sort?

A. If the American Legion hall is running for purposes of profit, we don't charge the American Legion. I would like to answer that further. If someone hires the American Legion hall, and if the American Legion rent a user their hall, to a group of people who want to stage a dance for [fol. 1326] purposes of profit—

Q. (Interrupting) Now, volunteer fire departments, where they conduct dances in municipal auditoriums, how is that handled?

A. No, we do not collect from volunteer fire departments. We are only collecting from people in the usage of music for purposes of profit. We don't collect from granges, American Legions, and we don't collect from municipalities. I can refute it to this record.

Q. Now, Mr. Buck, when this money is collected in for the public performance rights, the composer whose music has been played for public performance rights, he doesn't get the particular money that comes in; it goes into the coffers of the American Society, and there, through its Board of Directors, it is divided up into classifications to which the Board of Directors assign the various membership, is that right?

A. That is right.

Q. In other words, if a composer who has—

A. (Interrupting) Let me correct you, sir. The Board of Directors, they distribute it with every publisher and writer member in the American Society.

Q. There isn't any doubt about that. Now, how is that classification of the membership arrived at; who arrives at it and determines that?

A. The classification committee—there is this committee in the American Society. For the record here, all the money taken in by the American Society is distributed fifty per cent to the publisher members of the Society and fifty per cent to the writer members of the Society. The twelve [fol. 1327] publishers who are members of the Board of Directors sit down and analyze the activity of the numbers, and the number of works in the catalog of that man; the catalog and quality of his works and the years of service that the Society has had accessibility to that catalog, and that Board is representative, sir, of the production publisher, the so-called standard publisher who publish what we call standard works, I mean like Mrs. Nevin's husband who wrote "The Rosary," and she is in this court room, the widow of him. They have representation on the Board. The popular song writer who writes a number of songs, they have representation on the Board.

Q. You say there are about one thousand composer members?

A. That is right.

Q. I think that the exhibit you introduced here showed somewhat less than that; I think about 889 to 900.

A. Well, I am telling you as of today. We have taken in members; we have every month a membership committee that meets and reports at our Board of Directors, and we elect new members. I can give it with a degree of accuracy as of today.

Q. Now, among those one thousand members, the composer members, that get fifty per cent of the net receipts, there are classifications of those members that are made by the classification committee?

A. That is right.

Q. Now, you have been a member of that classification committee since its foundation?

A. And chairman of it.

[fol. 1328] Q. And you are president of the Society?

A. Yes, sir.

Q. And you are familiar with the subject matter of classification, I suppose?

A. Yes, sir.

Q. Now, please tell the Court as briefly as you can the various classifications.

A. I will be happy to do so.

Q. Go ahead.

A. First, I must prepare the Court so there will be no false intimation in the background in the atmosphere of what is going on here. Ordinarily we would like to have a system of each time a number is performed that that person was paid for that individual performance.

Q. That is a physical impossibility.

A. You know that, sir. You know there were sixty-five million performances publicly performed in the United States last year, and it would take a city as big as Lincoln, Nebraska and all its clerks to analyze those programs and extract them.

Q. Get back to the question.

A. I am going back to the question. In the absence of that, we formed what we call a classification system, wherein representatives from the Board of Directors of every quality and nature of work would meet every three months, going over that member's work, his contributions, how many years he had been in the Society, the number of works contributed, the nature and quality of his works, the vogue

[fol. 1329] and popularity of his works. That is the way we classify these members.

Q. How many are there? Give us the classifications; what I want are their classifications.

A. Of the exact classification?

Q. Yes.

A. First class is Double "A", the next is "A".

Q. How many members are there of the Double "A" class?

A. About fifty.

Q. How much do they get per year?

A. About \$15,000.

Q. Are you in that class yourself?

A. No, sir, I am not, unfortunately.

Q. There are about fifty in that class, and they get about \$15,000 per year?

A. Yes, sir.

Q. What is the next lower class?

A. "A".

Q. How many are there of that number?

A. There must be about fifty.

Q. And what do they get per year?

A. About \$12,000 a year.

Q. Are you a member of that class?

A. No, sir, I am not. And if it is any information to you, owing to my activities in the Society as its president, such as at this moment—

Q. (Interrupting) You are a member of one of the classifications, are you not?

A. I took myself out of Class "A", where I was since the foundation of the Society, and moved myself down.

[fol. 1330] Q. How long were you in Number "1" classification?

A. I was in classification "A"—first it was "AA" from 1914 up to six years ago, and I personally took myself out of that class owing to my inactivity.

Q. You haven't written any music or composed lyrics for many years?

A. The last thing I did was the late Florenz Ziegfeld's last Follies he produced before he died in 1932.

Q. Go on with the rest of the classifications.

A. The next classification is class "Double B", then "B", then "Double C" and then "C".

Q. "B" is what? How many members are there and what do they get?

A. At the moment I can't tell you. I would be very happy to furnish this information.

Q. Couldn't you give us about what they are?

A. Yes.

Q. What are they?

A. I will answer you, and I trust this Court and you will accept this as approximate.

Q. All right.

A. I am not such a genius that I can tell you for sure. I imagine in Class "B" there would be—

Q. (Interrupting) "Double B".

A. "Double A" fifty—between forty and fifty in "A". I imagine in "Double B", about forty in "B".

Q. Take it right down.

A. I have to wait a moment. In "B", about thirty or forty. In "Double C"—

[fol. 1331] Q. (Interrupting) Give us the amount of the various ones.

A. Well, the top class gets about \$15,000.

The Court: What do you mean by "top class"?

The Witness: "Double A".

A. (Continuing) "Double B" gets about \$9,000, or \$8,000. "Single B" gets about \$6,000 or \$7,000. The next class, "Double C", gets about \$2,000.

Q. How many members in that?

A. In "Double CC"?

Q. Yes.

A. I imagine about seventy-five or one hundred, and the same in "C".

Q. Then what is there?

A. The next class is called "C-1".

Q. What do they get?

A. They get about \$1600.

Q. How many are there in that?

A. Well, in "C-1", I imagine there are about fifty or sixty.

Q. And then what?

A. The next class is the class called "Double D"; that gets about \$1200 a year, I imagine.

Mr. Frohlich: You mean each member of each class gets that much each year?

The Witness: Each member of each class gets that much each year.

Q. What is the next class?

A. Interspersed in between the classes—I want to straighten the record out while going down the road. In between I have skipped a couple, where I want to put it in. [fol. 1332] There is such a thing as a permanent “A”, such as a set classification, that a person derives, and there is a permanent “B”, and there is a permanent “C”—as long as they live they get a set amount of money.

Q. What are those amounts and how many members are there in those permanent classes?

A. I imagine in the permanent “A” they get \$4,000 or \$5,000 a year; about ten. I imagine in permanent “B” they get about \$3500 a year; there are about ten or twelve in that class. In permanent “C” there is about eighteen or twenty. You realize, sir, I am guessing, without the accurate figures in front of me, but they are approximate.

Q. What is the lowest class after the last one you mentioned?

A. The lowest class is Number 4.

Q. How many are there in that?

A. Oh, I imagine in “4” there are about seventy or eighty.

Q. And they receive about how much per year each?

A. About \$40.00 a year—\$10.00 a quarter. They are people who have at some time or another written a song or two, but who haven’t written anything that has attained any eminence in the Society, and they want to be members of the Society.

Q. Then you have a non-participating membership, do you?

A. Yes.

Q. How many in that?

A. I imagine the non-participating membership would have about—may I correct this for the Court here, about this non-participating membership so that this won’t be misconstrued? In the policy of this Society, if a man [fol. 1333] makes application for membership, and he is first put in a non-participating class for reasons of wanting to know his stability, whether he is going to remain a song writer, whether the quality of his work is such that he should be put into an active class, which is an active mem-

bership where we divide money, there is a very definite reason for that. If you are a music publisher and make application to the American Society, we take you in and we first put you in the non-participating class.

Q. How long does he remain in that non-participating class?

A. Until such time until some public performance is made in these United States of his work. A lot of those men in those classes don't have public performance. The minute they publicly perform, we make them active.

Q. Is there any fixed time they must remain in there, such as five years?

A. No, sir; they can stay in five minutes if they show activity or have publicly performed in the United States.

Q. When they first come in, they come into the non-participating class?

A. That is right.

Q. That is the way the members come in?

A. Every member comes in the American Society that way.

Q. And then he stays in there until the Board of Directors through their classifying committee takes him out?

A. No, the classification committee has nothing to do with it. The Board of Directors elects him to membership, like the Bar Association or the Medical Association.

[fol. 1334]. Q. After he is elected to membership, then how does he get into the various classifications?

A. You mean how he gets to his classification?

Q. Yes.

A. These classifications are used in the absence of the program system which would take a million dollars.

Q. I understand that.

A. You mean how does he become classified?

Q. Yes. Through the classification committee; you have already answered that.

A. Yes.

Q. And how many members are there from this list that you handed in of some one thousand members—as I say, nine hundred to one thousand members—that are in the non-participating class probably would be the difference of the sum total of those you have already mentioned, and one thousand, isn't it?

A. I don't think there are over one hundred non-participating members in the Society. He is a person with a desire

and inclination to write, and he has written a song that is not publicly performed. That is why he is in the non-participating class. The minute a publisher or writer shows in any licensed establishment in this country that there is performance of his work he is immediately made active, so I don't want any misinterpretation of a non-participant.

Q. The Society then is operated through a Board of Directors of twenty-four men, isn't that right?

A. That is right.

[fol. 1335] Q. Of twenty-four members?

A. That is right.

Q. And your articles of the association show how the members are elected?

A. That is right.

Q. And elsewhere here we have the members who make up that Board?

A. Yes.

Q. You are president of this Society?

A. Yes, sir.

The Court: He has testified to that.

Q. You receive compensation for acting as president, do you not?

A. Yes, sir.

Q. And that is paid by the American Society?

A. Yes, sir. But I would also like to put in the record in answer to that question, I served from 1914 to 1931 without a dime in salary.

Q. You get a salary now?

A. Yes, sir.

Q. What do you get?

A. \$50,000.

Q. Per annum?

A. Yes, sir. I would like to straighten this out, too. Up to three years ago—let's put all the cards on the table, so that it won't inflame the imagination of the record—I got \$20,000 up to three years ago, then I got \$35,000, and as of January 1st, unrequested, I get \$50,000.

Q. What classification are you in?

[fol. 1336] A. I am in Class "BB". I put myself there.

Q. How much per annum?

A. That gives me about \$8,000, I think.

Q. Now, is Mr. Mills secretary-treasurer of the organization?

A. No, he is not. Mr. Mills is employed as chairman of the administrative committee of the Society.

Q. He receives a salary, too, in the administration of this Society?

A. Yes, sir.

Q. What salary does he get?

A. \$50,000 a year.

Q. That is the Mr. Mills who is in the court room?

A. He is here, and is going to testify and tell you about certain things.

Q. Mr. Paine also?

A. He is also here, and he is general manager at \$25,000 a year.

Q. Are either Mr. Mills or Mr. Paine composer members?

A. They are employees of the American Society and run the operation of its business.

Q. You maintain an office in New York City?

A. We certainly do.

Q. What is the address?

A. 30 Rockefeller Plaza.

Q. You have employees?

A. We have.

Q. And run and operate the American Society of Composers, Authors and Publishers at that place?

[fol. 1337] A. We do. We have no magic to do this without employees.

Q. You have payrolls and pay your stenographers and clerks the same as anyone else in business?

A. Yes.

Q. Now, you also have in your organization a group that are called the publisher members?

A. That is right.

Q. And they consist of some one hundred and twenty-three or one hundred and twenty-five of the music publishers in the United States, is that right?

A. That is right.

Q. When a person composes a piece of music they have it copyrighted or they assign the rights of having it copyrighted to their publisher, is that right?

A. That is right.

Q. The publisher sets it up in salable or usable form?

A. That is right.

Q. The publisher sells that music to the public that want it, the users that want the records?

A. You have forgotten a very important thing in painting that picture. The publisher, when he takes that copy of music I created, he must then create a demand for that music. That is a very important thing, a function besides printing sheet music.

Q. That is a matter of salesmanship?

A. That is right. That is a very important thing.

Q. And each one of those publisher members are members of the American Society of Composers, Authors and Publishers, is that right?

[fol. 1338] A. Yes, sir. We have no jurisdiction over any publisher who isn't a member.

Q. Of this one hundred and twenty-three, they are the largest and best music publishing houses in the United States?

A. I believe that is true.

Q. Each one of those publisher members receive money from the Society each year?

A. That is right—fifty per cent of the entire.

Q. How is that fifty per cent of the entire divided?

A. That is divided on the same system that the writers have. A group of twelve men representing the so-called standard publishers who publish higher class music such as sacred music and the like, such as Carrie Jacobs Bond's music. The group of publishers who produce works of like musical comedies and the popular works—

Q. (Interrupting) Are put in different classifications?

A. Yes.

Q. How many classifications are there of the publishers?

A. Well, that I couldn't answer. I will be glad to furnish it to the Court. I imagine the publishers have similar classifications to the writers—maybe not as many classes.

Q. About what do the publishers receive from the first class in dollars and cents per year?

A. You mean the top ranking musical publishers?

Q. Yes.

A. Oh, I imagine \$100,000.

Q. How many in that classification?

A. I think two; it may be only one. May I say this to you, [fol. 1339] sir, I am not pleading any ignorance of this question, but I have never had anything to do with the publisher classification. The publishers settle their own classification affairs. While I sit as president of the Society, my presi-

gency comes by virtue of being a member of the Board, and I have always maintained the position that no publisher member sitting at that side of the table has any right to tell a writer member of the Society how he should be classified, or where classified, and from the same viewpoint the writer members never entered in the publishers' activities where they shouldn't. For the sake of the record, as the president of the American Society, I have attended every classification committee of the writers since its foundation, and never attended a meeting of publishers' classification in my life.

Q. Is there anybody here in your organization that can tell us about that?

A. Yes, sir. We have the general manager here, we have Mr. Paine and Mr. Mills who will enlighten you thoroughly on that question.

Q. In the distribution of this money, what amount or how much does the American Society get?

A. The American Society took in last year nearly six million dollars, and it cost eighteen per cent to operate, and the rest of it was distributed to its members and to fulfill a foreign obligation of about three hundred thousand dollars.

Q. The prices charged for the public performance rights in the State of Nebraska are fixed by your Board of Directors?

[fol. 1340] A. No, no. Let us get that straight. The prices as charged in the State of Nebraska—we sat down and negotiated, sir, so that we get the whole picture.

Q. Please answer my question.

A. I want to answer the question. You say we fixed it—we did not fix it. We negotiated with the National Association of Broadcasters who fixed it, and we sat down with the Hotel Owners Association and fixed it, and sat down with the Motion Picture Operators of the State of Nebraska and fixed it. I want that record clear. There was a period of negotiations. It was not fixed by any individual writer or board of directors of the American Society. It was fixed by negotiation.

Q. But the price ultimately arrived at and accepted and made satisfactory to the National Association of Broadcasters and the American Society, that price was fixed and finally determined whether acceptable or not by your organization in New York, isn't that right?

A. That is true, with the other negotiators on the other side of the table. May I say about being satisfactory? I don't think it is satisfactory on either side.

Q. Were any bonuses paid in addition to the regular salaries and things of that sort?

A. The only bonuses ever in the history of the association, and Mr. Mills or Mr. Paine and myself—the highest bonus ever was a \$5,000 Christmas present.

Q. When was that?

A. Last year.

[fol. 1341] Q. To each one?

A. Yes.

The Court: Each one?

The Witness: Yes, sir; I as president, and Mr. Paine as general manager, and Mr. Mills as chairman of the executive board.

Q. There is no agency here in the State of Nebraska that fixes the prices that users here in this state conform to?

A. What we do, our representative in the State of Nebraska knows about it.

Q. From information you send to him into the State of Nebraska?

A. Let me straighten you out now. He knows what the agreement was made in New York by the Broadcasters in the State of Nebraska who are members of N. A. B. on the deal also. He didn't negotiate it personally—it was negotiated by the N. A. B. and Board of Directors of the American Society.

Q. In other words, his information as to what to charge comes from New York, and then he follows out your instructions and puts that into force and effect in the State of Nebraska?

A. That is right.

Q. And that representative of yours here in this state, what is his name?

A. Mr. Eugene Blazer.

Q. He has been your representative for a number of years?

A. Yes, sir; and very efficient.

Mr. Hotz: I will ask the reporter at this time in connection with Exhibit Number 16, whether or not you have had

an opportunity to count the number of contracts in that [fol. 1342] exhibit?

The Reporter: I have not finished it as yet.

The Witness: About 390 in the State of Nebraska, I will tell you now.

Q. Are there any users of vocal and instrumental music in the State of Nebraska that do not have contracts, where they just temporarily go in and furnish music like dances or something of that sort?

A. We never issue licenses to any singer. We only license the establishment, either the owner or dance hall or the man who controls the lease of the motion picture theatre. Never in our life have we issued a license to a human being.

Q. Whoever it is you deal with, in individual instances, there are no special contracts that are made up for them; you do have instructions of that sort, where they collect money from the various users?

A. Never from an individual performer in the history of this country—from the establishment or hotel or dance hall or broadcasting station or picture theatre.

Q. We will say it is a dance hall or something of that sort, where they occasionally have a dance.

A. That is right.

Q. Where your inspectors would go around and negotiate and make a deal right on the spot?

A. That is right.

Q. I presume there are quite a few of those in the State of Nebraska, are there not?

A. Yes.

[fol. 1343] Q. Will you give us such instances?

A. Yes. There are some of them that pay \$30.00 a year to the American Society, and it gives them accessibility to forty-six thousand works from all over the world, without which they couldn't open the doors of their dance hall.

Q. You say there are forty-six thousand copyrighted works that the American Society has?

A. Forty-six thousand members, I wanted to say. I will correct myself. One thousand members of the American Society, and forty-four thousand members throughout the world who also go with the license we issue to these establishments.

Q. About how many pieces of copyrighted music would you say that the Society deals in the public performance?

A. How many, you mean, we have in your catalog?

Q. Yes.

A. For a user to use?

Q. Yes.

A. That is very difficult to say. I imagine he would have accessibility to three or four hundred thousand musical works or arrangements and also musical works. You must understand, sir, when I say that, I state that after a certain number of years according to the Copyright Act, the numbers fall into the public domain, but from then on such arrangements are made of classics which is copyrightable.

Q. They are copyrighted then again after that?

A. That arrangement is copyrighted, that specific arrangement.

[fol. 1344] Q. Let us get this straight about publisher members. There are one hundred and twenty-five members that are designated as publisher members; they are the part of your organization that actually own the copyrights?

A. They do, yes, in the majority of cases, because the custom has been in the musical business when a composer and author writes a song, they turn it over to the publisher who secures a contract from them at so much royalty, probably one or two cents, and for a production, six cents. That copyright is taken out by the publisher and that is why the publisher must be in the American Society.

Q. These publisher members each publish a catalog or have a catalog of the musical copyrighted compositions owned by their house, do they not?

A. Yes.

Q. But the public performance rights on each one of those catalogs by each publishing house is assigned to the American Society?

A. That is right; everything in their catalog is assigned.

Q. That applies to the State of Nebraska as well as elsewhere?

A. That is right.

Q. Those catalogs are available from those respective publishers?

A. They are.

Q. So that the public knows what each publisher has, the style, the kind and class of music, is that right?

A. Yes.

Q. In dealing with the public performance rights it must come through the American Society?

[fol. 1345] A. That is right, because there are thirty thousand licenses and no individual publishing house or writer is capable of looking after his interests with the infringements from Maine to California.

Q. Of course, you don't know, and have no way of knowing, the number of individuals and composers that have made up that vast amount of music, do you?

A. Yes.

Q. How many would you say there were in the United States?

A. I have given you the accurate figures of the number under our control—one thousand writers. In that, so that the record will be straight, there are about two hundred estates in there; they are dead, such as Victor Herbert and Sousa. Their widows and their children get money just as if Sousa and Herbert were living.

Q. Through whatever classification they happen to be in?

A. And they happen to be in the best, although Herbert has been dead for fifteen years; also Sousa.

Q. These composer members, in addition to what they receive from the American Society for public performance rights, they also receive, do they not, through an arrangement with their publisher, a royalty on the music sold?

A. Absolutely; that is why he went to the publisher with the song, to get it published, because it is not under the jurisdiction of the American Society until published.

Q. And they have got to come through the publishers in order to get any place with the American Society?

A. No, not necessarily.

[fol. 1346] Q. Then their music couldn't be published; they have to have a publisher?

A. When he starts.

Q. Do you know generally, and I think it appears in these depositions on file, what percentage or royalty they get for each piece of music sold, vocal and instrumental?

A. In the so-called popular song, such as any modern hit, what we in the trade practice call a popular song?

Q. It is three cents, isn't it?

A. Two in some instances.

Q. Between two cents and three cents?

A. It depends. A writer that is more distinguished, the more he can get.

Q. On that end of it, that is a matter of negotiation between the composer and the publisher?

A. Yes. The American Society has nothing to do with that.

Q. The composer gets his check for that royalty directly from his publisher for any amount he wishes to charge or whatever the deal is?

A. Whatever his standing is as a representative writer. He may have six cents if he is big enough and has written magic hits, and there is a demand for his work. Irving Berlin publishes his own music.

Q. Irving Berlin is an important composer and a member of your Society, is he not?

A. One of the original members of the American Society in 1914.

Q. And a publisher member?

[fol. 1347] A. Yes; he owns his own publishing house and writes. He has a tinge of genius.

Q. The matter of the collection of the public performance rights, if the user in the State of Nebraska refuses to pay or refuses to accept the terms and conditions, how is that handled? Supposing the user of vocal and instrumental music in the State of Nebraska in dealing with the representative of your Society in the State of Nebraska, couldn't get together with him, and they refused to pay or said it was too much and wouldn't pay that amount, and they couldn't make a deal or a transaction satisfactory to your Society in accordance with the instructions from your office in New York.

A. That same goes with any business in the world. If there is no deal you don't want that, and then you don't use it.

Q. Then you furnish him with a typewritten or copy list of the copyrighted music you own?

A. No. We furnish any licensee with the American Society. We have no printed list.

Q. There is no printed list furnished?

A. May I say this so that the Court will have a clear conception of it.

Q. I want them to have a clear conception.

A. We have put in this record a list of the members of the American Society, every composer and author and every publisher, and it is very easy for a user of music who desires to use music for public profit, all he has got to do is look at that sheet music—there is the publisher and there is the

writer, and if that fellow belongs to the American Society [fol. 1348] and he wants to use it, all he has got to do is find out whether the Society has control of it or not.

Q. By going to the copyright office?

A. No.

Q. By going to the music itself?

A. No.

Q. Now, Mr. Buck, isn't it true that the average operator of a hotel or broadcasting station who buys his music under contract, and is liable under the law for these public performance rights, has no way of telling what his musicians are going to play?

A. It is not true, and he is not running a good broadcasting station if he is operating that way. Even when there is remote control into the hotel, he should see the quality and nature of the works if he running a good station, and that is the only kind he will run if he is smart.

The Court: Just a minute. Limit your answers to the questions.

The Witness. I beg your pardon; I apologize to the Court.

Q. You think it is necessary under your viewpoint that a hotel proprietor or dance hall proprietor or any other user of music such as broadcasting stations, they must know and determine if they can't deal with you or won't deal with you, and they must then determine from each piece of music played, from the marks placed on it, whether it is copyrighted or not, and by whom?

A. There is not a copy of sheet music played unless the [fol. 1349] publisher's name and the author's name is on it.

Q. In the event the music comes into Nebraska from the National Broadcasting Station in New York, or the Columbia or Mutual, and it is sent in to WOW or the Central States Broadcasting Station in this state, and there re-broadcast, and assuming they haven't had any opportunity to deal with you, or have not dealt with you, what means or method would they have of knowing whether or not it was copyrighted?

A. I am quite sure with all the rights involved in getting a license from the United States Government that no broadcasting station in the State of Nebraska would indulge in any such activity even if they bought and paid for a sustaining program from New York. They certainly want to know the nature and quality of it, and that it was cleared,

and if they bought a nationally known program like Charlie McCarthy or Toscanini's orchestra, they would certainly know that stuff was cleared. The broadcasters are smart.

Q. Mr. Buck, the fact remains if they cannot deal with your Society with the amount of copyrighted music there is, speaking now of broadcasting stations, hotels and so forth, or don't deal with your Society, and assuming that they are acting in good faith and do not want to infringe on the copyrights, they have no alternative excepting to go to the sheet music and look on it and see in whose name it is copyrighted?

A. I beg to differ, sir. In operating a broadcasting station he pays the employees for a musical knowledge and to put on a program. A good broadcaster knows where to get [fol. 1350] a product from, and I hope he knows the nature and quality of his works. I am leading to this point, that the public domain has millions of works that are acceptable and that he can use.

Q. Who would know in your organization, would it be Mr. Blazer or otherwise, the amount of money paid to your Society in the State of Nebraska that is not covered by the contracts in Exhibit Number 16?

A. That is rather a complex question. If you will simplify it, please.

Q. I mean not covered by contract, but isolated.

A. What is Exhibit Number 16?

Mr. Frohlich: It is based on something not in evidence.

Mr. Hotz. I only asked him who would know it.

Mr. Frohlich: You asked him who would know something, which, I say, is not in the evidence.

A. If you will specify, I will be glad to answer, if you will tell me what contracts.

The Court: I don't think there is any place in the evidence for that question.

Mr. Hotz: I will withdraw the question.

Q. Now, what percentage of the publishers of the United States are members of the Society? I mean that are really in the business; I don't mean isolated publishers.

A. How many musical publishers in the United States?

Q. I mean what percentage of publishers of vocal and instrumental music used in the State of Nebraska, published [fol. 1351] by members of your Society?

A. I imagine about fifty per cent.

Q. What amount of the vocal and instrumental copyrighted music is vested in your Society in public performance rights?

A. You mean created in the United States?

Q. Yes.

A. As created in the United States and as written?

Q. Copyrighted in the United States.

A. That is a very difficult question to answer. I would imagine about seventy per cent of it, conservatively. That is all of it the people want to hear.

Q. I think you stated clearly you did not publish a complete list of your copyrighted music?

A. We do publish a complete list of every publisher member and we do publish a complete list of every author and composer under contractual arrangements with the American Society, and all you have to do is get from the American Society that book as put in evidence. If you are running a broadcasting station or dance hall, and if you are using any of those, you are doing it without their permission. It is very simple.

Q. That is the way you have of notifying the public of the copyright?

A. That is right.

The Court: There is a continual flow of music. While I am talking to you now, men are creating and writing music—it couldn't be up to date.

[fol. 1352] Q. What if somebody uses one of those that is just published or copyrighted?

A. If he is a member of the Society there is no danger of that at all. It can't reach the user until it reaches that state of composition.

Q. Through the publisher?

A. Through the publisher, unless the man is so famous, as Mr. Berlin or Mr. Kern, who let bands introduce it before publishing. Mr. Victor Herbert used to do that, and Mr. Sousa used to do that with his famous marches. He would write a march for a university or state or band and he would let them go ahead and use it before it was even published.

Q. Do you know the amount of music that was sold, vocal and instrumental, by the publisher members last year?

A. All I know, sir, is the sales of sheet music dropped from about seventeen million to two million in ten years.

That will give you an idea. There is a cross section of the picture. It has dropped from seventeen million income to be distributed to the writers, from seventeen million to two million. That gives you some idea of what has happened.

Mr. Frohlich: Are you talking about 1933 for that two million, or down to the present time?

The Witness: 1933.

Q. You say you could not estimate the number of copy-rights your Society now owns, you as president of it, that is, in the United States?

A. No, I could not.

Q. Or the public performance rights your American Society own?

[fol. 1353] A. Frankly, I couldn't give you an accurate picture.

Q. Can't you come within one hundred thousand of it?

A. No. May I say I can't?

Q. Who in your organization can?

A. I am going to answer that, sir. It is entirely possible Mr. Mills or Mr. Paine can give you with some degree of accuracy the number, as they are the actual technical runners of the American Society, just what it has in it. They can be more capable of answering that particular question than I can. You will have that answered in the record here.

Mr. Hotz: With the permission of the Court and counsel, Mr. Bennett would like to ask the witness a few questions. Is there any objection to that?

Mr. Frohlich: Well, I have no objection, if Mr. Bennett will state his relationship to the National Association of Broadcasters and state for the record whom he represents.

Mr. Bennett: Your Honors please, I am representing one of the defendants in this case, and happen to be a practicing lawyer in Washington, D. C., and one of my clients is the National Association of Broadcasters.

Mr. Frohlich: No objection.

Mr. Hotz: Mr. Bennett is also with the Department of Justice.

Cross-examination.

By Mr. Bennett:

The Court: Is there some special line on which you [fol. 1354] would like to examine?

The Witness: I will be glad to answer them.

Mr. Bennett: I would like to qualify some of the things that were overlooked.

The Court: All right; proceed.

Q. Mr. Buck, you stated on your direct examination that you were present in Washington and appeared before the copyright committee of Congress on all of the statutes or bills which you testified were introduced in Washington?

A. Yes, sir.

Q. Do you recall appearing in Washington before the copyright committee of the House, or rather the committee on patents of the House of Representatives of the 71st Congress, second session, March 4th and 5th and April 2nd, 1930?

A. I do, yes. May I ask, is that the House? Will you specify who was the chairman at that particular time of that sub-committee? Was it Mr. Sirovich?

Q. I imagine so, but I can't state that. I would like to read the statement you made as appears in the official publication of the testimony, and ask you whether that statement was true at the time it was made; is it from Page 250.

The Court: You better first ask him whether he made it.

Q. This appears in the transcript of that record as part of your testimony and statement to the committee.

The Court: Just a minute. That is not pertinent at all.

Mr. Bennett: I think, your Honors, it is quite pertinent [fol. 1355] in line with Mr. Buck's testimony put in here.

The Court: If you want to ask him whether he made such a statement, you may do so.

Mr. Bennett: I did ask him.

The Witness: I haven't heard him.

The Court: You didn't ask him whether he made any such statement.

The Witness: You haven't asked me yet.

Q. Did you testify before that committee?

A. Yes, I did.

Q. Will you read this statement and state whether you made it?

A. Why not ask the Court what it is? Let's have it out in the open here.

Q. I would be happy to read it.

A. Go ahead.

Q. "In former times they had told you about the American Society—a terrific monopolistic chemira that was just going to take the Victor Company and the motion picture industry right out of business. Let us put the cards on the table and see what the American Society is. The American Society is an organization which consists of all the authors and composers and their publishers in America."

A. It is entirely possible I said that as a salesman, like your pride of telling the people the N. A. B. is the greatest broadcasting organization in the United States, and as Mr. Ford said, he has the best car. It is entirely possible as head man selling the music of this nation to users of this [fol. 1356] country, I am entirely capable of saying I have the best product. It is very human, and I am entirely capable of saying that.

The Court: Just a minute. Just answer the question whether you made that statement or not.

A. (Continuing) I may have said that. I would like to read what the question was leading to that.

The Court: The question is, did you make that answer or not.

The Witness: I would like to read it.

The Court: He read it to you.

The Witness: It says there I said it. It must be true.

Q. Now, Mr. Buck, do you recall testifying at the hearing held March 21-24-25, 1932 by the committee on patents of the House of Representatives, 72nd Congress, in which you testified; do you recall that?

A. I testified, as I said, at every hearing before the Congress on anything pertaining to the copyright act. I don't know what I said. I did testify. What is the substance of that testimony, I can't recall at the moment. Tell me what I said.

Q. The record published of the committee hearings shows the following testimony: "Mr. Boland:"

A. He was the attorney for the Hotel Men's Association of the United States.

Q. (Continuing) "The American Society of Composers, Authors and Publishers, I believe—I may be wrong—does [fol. 1357] not control much more than one-half of the popular music." The Chairman: Why, Mr. Buck told me they control ninety-five per cent." "Mr. Buck: The copy-

righted works." "The Chairman: Can you prove that to me?" "Mr. Buck: Yes." Did you make that statement, Mr. Buck?

A. It says it there. I don't recall it at the time. I am entirely capable of saying that. It depended on that question which was before the House at that time.

Q. Did you believe that statement to be true at the time you said it?

A. That we controlled ninety-five per cent of the music at that time?

Q. Yes, in 1932; March, 1932.

A. I am incapable of saying anything unless I really believe it, Mr. Bennett.

Q. Mr. Buck, in your direct testimony you stated that if it wasn't for the Society you would have to have personally three or four checkers or investigators in the State of Nebraska in order to check up on possible infringements of your copyrights?

A. As the law now stands, but if this law is passed, I would need one hundred.

Q. In the bill of complaint filed in this cause, on Page 14—you signed the bill of complaint, I believe?

A. I did.

Q. (Continuing) This statement is made: "Complainant Gene Buck wrote the lyrics of many musical compositions for over twenty years last past, and from time to time he [fol. 1358] entered into contracts with various musical publishers, pursuant to which such publishers duly secured copyright in such respective compositions by publication, deposit and registration of the works as required by the Copyright Act." Do you own the copyrights of those works, Mr. Buck, or the publisher with whom you contracted?

A. The publisher owns them.

Q. Then am I right in believing that it would be the publisher who would have to check to determine infringements in the State of Nebraska?

A. May I correct you, Mr. Bennett, and say to you it so happens in the construction of the American Society that when a member signs an agreement, from the time he signs that agreement, an author and composer vests in that Society that performing right before it is ever published. It comes under the jurisdiction of the Society on its creation. I want to make that clear with this Court. The minute he

writes that comes under the jurisdiction of the Society through a contractual arrangement.

Mr. Bennett: May I suggest for the record there is a copy in the record, and it shows as to whether it transfers any rights prior to publication.

That is all.

Mr. Hotz: Would the Court consider it of any value right now if I read one of those typical contracts?

The Court: I presume it is in evidence.

[fol. 1359] Mr. Hotz: It is in evidence.

The Court: It speaks for itself, unless you want to make an argument, and have an argument with this witness. One of the troubles here is that the witness has construed a good many things that are in writing.

Further cross-examination.

By Mr. Hotz:

Q. Now, the point I want to get at is this: In the agreement you have with the——

Mr. Frohlich: Do I understand you are interrogating the witness?

Mr. Hotz: Yes.

Mr. Frohlich: I thought you had completed.

Mr. Hotz: Just one question.

The Witness: It is all right.

Q. When a member becomes associated with the American Society and signs one of these contracts such as Exhibit No. 14, which you have signed, you say every other member must sign?

A. Publishers and writers have the same form of contract. There is no difference.

Q. They have the exclusive right of public performance in every musical work, and it shall be deemed assigned to the Society by this instrument, whether they have made any other assignment?

A. That is right.

Q. And that goes for future works and everything else? [fol. 1360] A. If I go home tonight and write a song, the minute I get through it comes under the jurisdiction of the Society. Here is the distinction I want to make clear for the Court.

Q. Just a minute. I will let your counsel examine. That is all our cross examination.

A. All right.

Mr. Frohlich: No further questions.

Witness excused.

[fol. 1361] ERNEST PRIESMAN, was called as a witness on behalf of the complainants, and after being duly sworn, testified as follows:

Direct examination.

By Mr. Frohlich:

Q. State your full name.

A. Ernest Priesman.

Q. What is your occupation?

A. I am in the orchestra business.

Q. You conduct an orchestra?

A. I have an orchestra.

Q. Do you reside in the State of Nebraska?

A. Yes, sir.

Q. Where?

A. Omaha, Nebraska.

Q. Now, how many years have you conducted an orchestra?

A. I have been connected with orchestras for the past ten years.

Q. Have you played at any of the hotels in Omaha?

A. Yes, sir.

Q. Have you played recently?

A. Yes, sir.

Q. How many men do you employ in your orchestra now?

A. Well, in the present orchestra, nine people.

Q. Including yourself?

A. Yes, sir, including myself.

Q. Do you purchase music for distribution to your orchestra?

A. Yes, sir, I have occasion to.

[fol. 1362] Q. Do you also receive professional copies?

A. Indirectly I receive some professional copies.

Q. About how large a library of music do you maintain?

A. Well, the dance library we use usually consists of one hundred tunes.

Q. In addition to a dance library do you have a vocal library?

A. There are some standard things we carry, but the vocal library is included with the regular music.

Q. So that you have to have one hundred orchestrations, I take it?

A. We usually carry that along on each job, yes, sir.

Q. Do you get a good deal of that for nothing?

A. In our particular case, we don't get a lot of it for nothing. We get part of it for nothing.

Q. What proportion of the library you carry do you obtain gratis?

A. I would say (in our particular case maybe ten to fifteen per cent is sent in through hotels as professional copies.

Q. Where do you purchase your music?

A. At various music stores, mostly right in Omaha, and sometimes we send out for it.

Q. Do you purchase any from jobbers?

A. At present we purchase right from the Lyon & Healy retail store in Omaha.

Q. Have you ever purchased any music from any jobbers by mail?

A. I have had occasions to.

Q. How many musical compositions do you perform of an evening?

Q. It would depend if it was a dance engagement or what [fol. 1363] type of engagement you are referring to. On a three-hour dance I would say we play dances in sets of ten at a dance, and if ten at a dance, approximately three tunes to a set.

Q. You also play encores and request numbers?

A. Of course.

Q. When you come into an establishment like the Hotel Paxton, does the proprietor have anything to do with the selection of the musical compositions, or do you do it yourself?

A. We do that out of the pieces we have there, and the requests given to us.

Q. The proprietor doesn't have to do anything about that?

A. Seldom.

Q. You, yourself, as an orchestra leader have never received a license from the American Society of Composers, Authors and Publishers, have you?

A. No, sir.

Q. And no other orchestra leader, so far as you know, has applied for or obtained such a license?

A. None I know of.

Q. You rely on the fact that the place in which you play is a licensed establishment?

A. Yes, sir.

Q. When you purchase a composition for your orchestra, you can't use an ordinary piano copy, can you?

A. Not for your orchestra.

Q. You have got to have an orchestrated edition which contains music for each particular instrument in that orchestra?

A. Yes.

[fol. 1364] Q. What do you usually pay for an entire set of orchestrations?

A. From fifty to seventy-five cents.

Q. That covers the entire band, doesn't it?

A. Yes, sir.

Q. If you were compelled to purchase this music for your orchestra, and you were compelled to pay a performance price in addition to the price of the sheet music, could you profitably conduct your business?

Mr. Hotz: Just a minute. I object to that as calling for a conclusion of the witness. There is nothing in here about his earnings or anything of the sort. It is immaterial.

The Court: Overruled.

A. I would say in answer to that, at the present wage scales and prices it wouldn't be profitable. The cost has to be passed on to the customer.

Q. In other words, the additional cost of performing rights would have to be paid by yourself in the first instance?

A. Yes, sir.

Q. And then you would have to get it by extra salary from the hotel?

A. It would have to be paid by the direct employer.

Q. Who employs your orchestra?

Mr. Hotz: Objected to as calling for a conclusion of the witness, and highly speculative who it would be paid by. It would depend on the negotiations.

The Court: Sustained.

[fol. 1365] Q. Do you keep any log or record of your performance?

A. As to which numbers we play?

Q. Yes.

A. No, sir, not in general.

Q. Are you familiar with the method or manner of conducting a business with other orchestras in the State of Nebraska?

A. I would say in general I do, yes, sir.

Q. Do they keep logs of the composition or records of the particular numbers they play?

A. I don't believe they do as to what they play during each evening, unless it would be radio time or something of that kind.

Q. You say you play encores or request numbers. Is that customary in the modern dance entertainment?

A. It absolutely is—it is part of good business.

Q. In other words, after you have played a number, somebody in the audience may come along and say, "We would like to have you play such a number," and you play it for them, if possible?

A. Yes, sir.

Q. You don't have to worry or make any attempt to find out who owns the copyright of such a request number, do you?

Mr. Frohlich: Withdraw the question.

Mr. Hotz: Let him answer the question.

A. We don't usually; we never have.

Q. If you had to play an evening's entertainment from music on which you had paid a performance right within the State of Nebraska, would you be able to play encores or request numbers?

[fol. 1366] A. It would be very, very difficult if we had to check everything.

Q. You first would have to check up and see if you had the music and had paid the price on it, is that right?

A. Yes, sir.

Q. When you purchase a sheet of music are you able to tell at that time in what kind of establishment you are going to perform in in the future?

A. I wouldn't say we would necessarily think of that or know definitely.

Q. What I mean is this, Mr. Priesman, you play in hotels occasionally, don't you?

A. Yes, sir.

Q. And dance halls?

A. Yes, sir.

Q. And other places of entertainment and amusement for the public?

A. Yes, sir.

Q. You don't know at this time where you are going to play six months or a year from now, do you?

A. No, sir.

Q. And if you purchase a sheet of music which had on it a list of various prices for various forms and method of entertainment, and various kinds of public performance for profit, could you, as a practical matter and practical use, in advance, say that you are going to purchase music for this and this kind of entertainment, could you do that?

A. I wouldn't say, as a practical matter, you could do that.

[fol. 1367] Q. Would a statute which compelled you to purchase music under those conditions enable you to continue in business?

Mr. Hotz: Just a minute. I object to that as calling for a conclusion of the witness.

The Court: Objection sustained.

Mr. Frohlich: That is all.

Cross-examination.

By Mr. Hotz:

Q. About how much is your orchestra paid by week by an establishment which employs you and your eight or nine assistants?

A. On a weekly engagement, by the week?

Q. Yes.

A. That price scale varies.

Q. At the Fontenelle Hotel, for example, have you ever played there?

A. Yes, sir.

Q. How much did you get?

A. I have never played steady engagements at the hotel. I have played at other hotels, and incidental engagements.

Q. What other hotels have you played at?

A. Paxton Hotel.

Q. How much did you receive for a week's engagement there?

A. Well, at the present time the price scale for side men run about a dollar and a quarter an hour on a thirty-hour week.

Q. How many men do you have?

A. Nine people; eight musicians and a vocalist.

[fol. 1368] Q. How much would that figure up for the week?

A. About three hundred and fifty dollars in round figures, I believe—that is what we are required to get.

Q. That is, the men?

A. Yes, sir.

Q. Now, the hotel makes a contract with you as the leader of the orchestra, does it not?

A. The contract at present is made with us acting as their agent to secure the services of musicians associations. We are their agent to secure music. In other words, they are the employer, and we as contractors are not considered the employer, the way the contract is stated. It is very technical.

Q. And, of course, that includes the music that is played on the program, that three hundred and fifty dollars a week, that covers, naturally, the sheet music and orchestrations you use or your singers sing on that program, isn't that right?

A. It does at present, yes, sir.

Q. How many different hotels have you played in, in the past year, in the State of Nebraska?

A. As a steady engagement?

Q. I am not concerned about that.

A. In Omaha, I have played at the Blackstone, Fontenelle, Paxton and Rome, and all the first class hotels.

Q. Have you played any in Lincoln?

A. Yes, sir.

Q. Where?

[fol. 1369] A. The Cornhusker Hotel and the Lincoln Hotel, I believe—those were party dates, single engagements.

Q. Any out in the state?

A. Yes, sir.

Q. Where?

A. Played at Fremont, Nebraska, at Lincoln, Nebraska—I couldn't tell you over the exact last year. Since I have been in the business the last couple of years, it has included Beatrice and Hastings, and all of the danceable towns.

Q. In the hotels?

A. If there are hotels, and sometimes in dance halls, and business in general.

Q. Mr. Friesman, do you know of any place where there is a record kept of number of orchestras, such as yours, or like yours, in the State of Nebraska, in operation in the state for playing music?

A. I don't know of any records where the list or organized bands are listed.

Q. Do you know of your own personal knowledge about how many there are in the State of Nebraska?

A. I am sorry, I couldn't say.

Q. In the City of Omaha, do you know?

A. I could approximate the professional or union orchestras.

Q. How many?

A. I would say there were probably ten to a dozen in various organizations in Omaha. However, that doesn't include the number of bands that play in Omaha. There are hundreds of bands playing in Omaha.

[fol. 1370] Q. They run up into large figures, don't they?

A. Yes, sir.

Q. They come there from elsewhere?

A. Yes, sir.

Q. Sent in by booking agencies, are they?

A. Sometimes they are, and sometimes they book themselves.

Q. In the last two or three years there has been quite a springing up in the demand for dance music on account of the number of dance halls and places where dancing and that sort of entertainment takes place, has there not been?

A. I wouldn't say any greater in the last two or three years. I would say in the past. You might say business has gone down—it depends.

Q. I am talking about Omaha and Nebraska.

A. I wouldn't say there was any increase.

Q. It is greater than it was five or six years ago?

A. I wouldn't say so considerably.

Q. How old are you?

A. Twenty-four.

Mr. Hotz: That is all.

Redirect examination.

By Mr. Fröhlich:

Q. Do these traveling bands come from outside the State of Nebraska?

A. Oh, yes, many of them.

Q. Various bands drift into Nebraska and play for a night, or two or three, and go out again?

[fol. 1371] A. Sometimes they are territorial bands and play from night to night.

Q. You said you did purchase some of your music through mail order jobbers or houses, or somehow through the mail?

A. Yes, sir.

Q. Did you purchase that by mail outside of the State of Nebraska?

A. Yes, sir.

Mr. Frohlich: That is all.

Mr. Hotz: That is all.

Witness excused.

[fol. 1372] HARRY ELMER TAYLOR, was called as a witness on behalf of the complainants, and after being duly sworn, testified as follows:

Direct examination.

By Mr. Frohlich:

Q. State your full name.

A. Harry Elmer Taylor.

Q. Where do you reside, Mr. Taylor?

A. Omaha, Nebraska.

Q. What is your occupation?

A. Theatre manager.

Q. You manage a theatre in Omaha?

A. Yes, sir.

Q. What is that theatre?

A. The Ritz.

Q. How many years have you managed it?

A. Ten.

Q. And in that theatre do you exhibit motion pictures to the public?

A. Yes, sir.

Q. And do you also as a part of your motion picture entertainment furnish musical entertainment in the theatre?

A. No.

Q. Well, the pictures that come into your theatre have music on them?

A. Yes, sir.

Q. And the music is heard by the audience when the picture is seen?

[fol. 1373] A. Yes, sir.

The Court: A sound track, you mean?

The Witness: Yes, sir.

Q. Do you also own any other place of entertainment?

A. We own the Music Box.

Q. A dance hall?

A. Yes, sir.

Q. In the City of Omaha?

A. Yes, sir.

Q. A large dance hall?

A. Comparatively.

Q. About how large would the dance floor be?

A. I imagine about seventy-five by one hundred.

Q. Do you operate that dance hall?

A. Every night in the week, except Monday.

Q. In the operation of the dance hall do you avail yourself of the services of an orchestra?

A. Yes, sir.

Q. Do you do that every night?

A. Every night except Monday.

Q. How large an orchestra do you employ there?

A. Ten men plus a leader and girl singer.

Q. What do you pay your orchestra weekly?

A. It varies from four hundred and sixty dollars a week to seven hundred dollars.

Q. Would you say that it would be safe to say six hundred dollars is an average price you pay for your orchestra each week?

A. Yes, sir.

[fol. 1374] Q. That would be at the rate of approximately twenty-four hundred dollars a month?

A. Yes, sir.

Q. Do you also have a license from the American Society of Composers, Authors and Publishers?

A. Yes, sir.

Q. How long have you had such a license?

A. Since we started three years ago.

Q. What do you pay the Society per month under the license?

A. Twenty dollars a month.

Q. Have you a license with the Society for your theatre?

A. Yes, sir.

Q. What do you pay the Society for your theatre?

A. Sixty dollars a year.

Q. In giving your entertainment in your Music Box do you keep a record or log of the particular compositions played there nightly?

A. No, sir.

Q. You rely solely upon your license with the Society?

A. Yes, sir.

Q. And when the orchestra leader comes in with his orchestra, you don't determine what pieces he is to play?

A. No, sir.

Q. You feel he can satisfy the public demands?

A. Yes, sir.

Q. Do you know whether or not there are request numbers and encores every night in the establishment?

A. Yes, sir.

[fol. 1375] Q. Do you also employ an orchestra from time to time that comes in from out of the State of Nebraska?

A. Mostly we do.

Q. Mostly your orchestras are traveling bands?

A. Yes, sir.

Q. Now, in your motion picture theatre you do not play music by means of any orchestra?

A. No, sir.

Q. It is simply that the film and sound track on the film carries with it whatever music happens to be on the film?

A. Yes, sir.

Q. And, of course, that film is leased or rented by you from distributors of motion picture films, isn't that right?

A. Yes, sir.

Q. This film comes into your place from outside of the State of Nebraska?

A. Yes, sir.

Q. Of course, we all know and you know most of the films are manufactured in Hollywood?

A. Yes, sir.

Q. And find their way into your theatre and other theatres in the State of Nebraska from time to time?

A. Yes, sir.

Q. Have you any control whatever over the music played on those film tracks?

A. No, sir.

Q. And in order for you to save yourself from infringement, do you rely solely on your license with the American Society?

A. Yes, sir.

Mr. Frohlich: You may cross-examine.

[fol. 1376] Cross-examination.

By Mr. Hotz:

Q. Where is the Ritz Theatre?

A. 24th and Patrick, in the City of Omaha.

Q. What is your seating capacity of it.

A. Five hundred and eighty seats, or six hundred—along in there.

Q. Do you own the Music Box?

A. Yes, sir.

Q. Yourself?

A. Yes, sir.

Q. Where is that located?

A. 19th and Capitol Avenue.

Mr. Hotz: That is all.

Mr. Frohlich: That is all.

Witness excused.

(Short recess.)

[fol. 1377] MRS. ANNE PAUL NEVIN was called as a witness on behalf of the complainants, and after being duly sworn, testified as follows:

Direct examination.

By Mr. Frohlich:

Q. State your full name, please.

A. Anne Paul Nevin.

Q. Where do you reside, Mrs. Nevin?

A. I reside in New York in the winter, and Blue Hill, Maine in the summer. I don't go abroad as I used to.

Q. You are the widow of Ethelbert Nevin?

A. I am.

Q. Can you tell us what year you were married to Mr. Nevin?

A. 1889, I think it was.

Q. Was your husband a composer?

A. Yes, sir.

Q. I show you, Mrs. Nevin, a list of compositions, and ask you whether these truly represent the compositions that were composed by your husband from 1874 down to 1901?

A. He died in 1901.

Mr. Hotz: We will admit, Mr. Frohlich, that the list of publications, of musical compositions, contained in the affidavit attached to her affidavit were publications of her husband, without further identification, and composed by him.

Q. Among those compositions was there a song called the "Rosary"?

A. Yes, sir.

Q. Was there a song called "Mighty Laka Rose"?

A. Yes, sir.

[fol. 1378] Q. Did those songs become famous?

A. I think so, if you judge by the number of copies that were sold.

Q. Now, Mrs. Nevin, are you presently a member of the American Society of Composers, Authors and Publishers?

A. I am.

Q. Was your husband in his lifetime ever in receipt of any moneys for the public performance for profit of any of his compositions?

Mr. Hotz: I object to that as incompetent, irrelevant and immaterial.

The Court: I think she may answer.

Q. Did your husband ever receive any moneys for the public performance for profit of his compositions?

A. I think not.

Q. Did he receive moneys?

A. You see, he has been gone many years.

Q. Did he receive moneys from the sale of sheet music of his compositions?

A. I think so.

Q. Did he receive money from the sale and exploitation of mechanical royalties?

A. I am not sure about that; I think not.

Q. So that the only substantial revenues, so far as you know, he ever received for any of his works was from the sale of sheet music?

A. Yes, sir, absolutely.

Q. He died, you said, in 1901?

A. Yes, sir.

[fol. 1379] Q. When did you become a member of the American Society?

A. I think it was—would it be 1925?

Q. Was it 1926?

A. I can't quite remember.

Mr. Frohlich: Will you stipulate it was 1926?

Mr. Hotz: Certainly.

Q. Ever since you have been a member of the American Society, Mrs. Nevin, have you been in receipt of income from the Society?

A. Always.

Q. Has that been the main source of income you have been in receipt of for your husband's work as a composer?

A. Absolutely.

Q. Do you receive any money today from the sale of sheet music from your husband's compositions?

A. I think I do. Wouldn't that be in the American Society?

Q. Do you receive any money from any publisher for the sale of sheet music today?

A. I don't quite understand—I think I don't. You don't mean the publishers?

Q. I mean the publishers.

A. Well, I get some from them.

Q. Does it amount to very much each year?

A. I think so.

Q. From the publishers?

A. A good deal.

Q. Do you also receive money from the American Society?

[fol. 1380] A. Yes, indeed I do.

Q. Does the money you receive from the American Society help support you?

A. It is practically my whole living.

Q. Are you willing to give up your contract with the American Society?

Mr. Hotz: Now, just a minute. Objected to as calling for a conclusion.

The Court: Objection sustained.

Mr. Frohlich: I want to point out to the Court in order for this lady to be able to receive any money for the sale of the public performance for profit in Nebraska she must give up that contract because the statute declares this is an illegal combination.

The Court: That is a conclusion, and argument.

Mr. Hotz: That is, as far as the American Society is concerned, but not as far as she is concerned.

Mr. Frohlich: The question was whether she would be willing to give it up.

Mr. Hotz: It wouldn't make any difference.

Q. Mrs. Nevin, have you ever had any experience in marketing, selling or exploiting any of your husband's musical combinations?

A. I have had very little—some.

Q. Are you able to look after the business end of the exploitation of any of this music?

[fol. 1381] A. I have done it so many years, and he has many foreign royalties.

Q. If you were compelled to act for yourself, without the assistance of the American Society, could you go into the State of Nebraska and protect yourself against the infringement of your husband's compositions within that state?

Mr. Hotz: We object to that as calling for a conclusion of the witness, and not proper evidence.

The Court: Objection sustained.

Q. Have you the financial means at this time, Mrs. Nevin, to employ investigators to come into the State of Nebraska and to investigate establishments to see whether or not your husband's music is played?

Mr. Hotz: We object to that as incompetent, and the witness showing herself not qualified to answer that question. It is a legal question, and calling for a conclusion.

Mr. Frohlich: She knows whether she has financial means.

Mr. Hotz: That would be immaterial.

The Court: I think it is immaterial; objection sustained.

Q. Mrs. Nevin, do you know anything about the various places of amusement and entertainment where music is played?

A. Yes, I think I do.

Q. Have you any sufficient experience to place upon any of the musical compositions of your husband a price for the [fol. 1382] use of the compositions in any of these places of entertainment?

A. You mean for me to pick them over and do that? I couldn't.

Mr. Frohlich: That is all.

Cross-examination.

By Mr. Hotz:

Q. Mrs. Nevin, who is your publisher?

A. I have two publishers.

Q. Who are they?

A. The Presser people of Philadelphia and the Boston Music Company of Boston, which is Schirmer of New York — of Boston; Schirmer of Boston.

Q. Now, those publishers are members of the American Society, that is, they are publisher members?

A. So far as I know, they all are.

Q. Now, in your dealings with your publisher, what man do you rely upon in the organization mostly as your agent and representative of your publishers?

A. You mean in the publishers?

Q. Yes.

A. I, of course, depend upon Gus Schirmer.

Q. You have known him for many, many years?

A. Very many years. And his father, of course, knew my husband, and he trusted him implicitly.

Q. They are one of the biggest publishers in the United States?

A. They are one of the biggest publishers in the United States, and a member of ASCAP.

[fol. 1383] Q. You receive, do you not, Mrs. Nevin, a royalty for the sale of the music?

A. Every three months.

Q. And you recall what that amounts to, about, do you?

A. I am afraid I don't. Well, you mean—you don't mean the American Society, do you?

Q. I am talking about what you get from your publisher.

A. I know I get a very good royalty, but I can't tell you the exact amount. For instance, the Boston Music Company pays me, and I don't have any contract with them; they pay me one hundred dollars a month.

Q. And then what else do you get?

A. Then, of course, the Presser people—I think most of their people they pay every six months, but I have mine every three months.

Q. How much is that?

A. It amounts to sometimes six hundred dollars and sometimes less.

Q. And then do you have other publishers too?

A. I think that is about all.

Q. Isn't there one more of Gustave Schirmer's house?

A. That is the same thing—it is the same.

Q. Now then, do you know enough about that to tell us if that is based upon so much per piece of music sold, three cents a copy?

A. I think so, it must be. I know it comes very regularly, and I am always glad to get it, and I get it, of course, through the American Society.

[fol. 1384] Q. We recognize the fact, Mrs. Nevin, that your husband's list of music is probably the greatest there is.

A. It is very great, I think. He began very early.

Q. It is used very extensively, is it now, over the radio?

A. I think so. At my husband's death, the "Rosary" sold at four hundred thousand, and now I think, according to the New York Herald Tribune, and a man in Washington, it is selling in the millions. The truth is I don't know, and I don't know whether it is true or not.

Q. Who owns the rights on that, the "Rosary"?

A. Who gets it? I do.

Q. Who owns the publication rights?

A. Schirmer and the Boston Music Company and Presser, but it is all with the American Society.

Q. The public performance rights are with ASCAP? You understand, I guess, what public performance rights are?

A. Yes. I think I have signed something for it.

Q. You signed one of their contracts?

A. Yes, sir.

Q. In what classification have they placed you?

A. I think it is one of the high ones.

Q. Do you know if it is fifteen thousand dollars a year, or less?

A. I think it is fifteen thousand dollars per year.

Q. Your husband died in 1901, you say?

A. Yes, sir.

Q. Who handled your affairs in reference to all of your rights prior to 1926, including your public performance rights?

[fol. 1385] I think it was just in the hands of my publishers—Schirmer and the Presser Company, and at one time the John Page Company, and Presser has bought the Page Company now.

Q. You would sit down occasionally and discuss prices and terms, I presume, with your publisher?

A. I am one person I think who is very close with everyone I deal with, with the publishers, all my publishers, and they even come and see me, which I think should be done by many, many people who are sometimes complaining they don't get the right royalty.

Q. Who is that?

A. It is the John Page Company, or Schirmer—I go down to see them, and the Boston Music Company, but, of course, that is Schirmer. But, of course, until the American Society came, my royalties were much lower.

Q. Your public performance rights came into an increasing amount after you became a member?

A. I think so. The truth is I know very little about the performance. The other part, I have.

Q. How long have you been in this higher class, this fifteen thousand dollar class?

A. Well, at first, of course, I didn't get so much, but some years ago they raised it. I never liked to speak of what I do get, because so many are in it, and I really never speak of it at all. It might cause a feeling on the part of those that don't get so much.

Q. You leave that entirely to the Board of Directors of ASCAP?

A. Absolutely.

[fol. 1386] Q. That is left to Mr. Buck and Mr. Mills and Mr. Paine?

A. And all the others, Mr. Mills and all of them. They have been of the greatest help to me.

Q. You of your own knowledge, Mrs. Nevin, have no recollection you can give us here of the number of pieces of music that are sold for vocal and instrumental purposes by your publisher; you couldn't give us that?

A. No. I think I could get it for you, if you want it, but I couldn't just right now say offhand, because I have such confidence in the American Society that I don't have to think one minute.

Q. That wouldn't be a part of their business; that would be Schirmer's business, the number of pieces that are sold by your publisher would be a matter between yourself and the publisher?

A. Yes, but that is all in the American Society.

Q. That part of it isn't, the royalties you get from Mr. Schirmer?

A. That is the ASCAP.

Q. You think that is the ASCAP?

A. We deal entirely with the ASCAP.

Q. That is your impression?

A. Yes; it is quite an impression.

Q. By the way, who represents you in your copyright matters in New York, what firm of lawyers?

A. I don't know any but the ASCAP.

Q. They handle that for you?

A. I think they handle everything.

Mr. Hotz: That is all.

Witness excused.

[fol. 1387] Mr. Fröhlich: No further witnesses, your Honors. All I have now are the depositions that were taken.

May it please your Honors, two depositions were taken pursuant to the notice, one for depositions in New York City in the summer of 1938, and after the depositions were duly certified they came back to the Clerk of the Court, and we have them here. The other two depositions were two witnesses, Jerome Kern and Sigmund Romburg taken in California last summer, 1938, and I have a copy of them here. The originals were certified and sent back to the Clerk of the Court and the Clerk has an entry on his docket showing they were received here in 1938, but he can't find them. I was wondering if I wouldn't be permitted to use my copy, subject to correction; it is a carbon copy. I suggest this

in order to save time, because I realize these depositions are quite voluminous. I would like to offer them all to the Court in evidence as if the witnesses were testifying, subject to the objections that were made by opposing counsel, and your Honors may rule on that when you come to the depositions. I think it would serve no useful purpose for me to stand up for a day and read them.

The Court: Wouldn't it be better if you offered in evidence [fol. 1388] the depositions of stated witnesses taken under this notice or commission, together with the cross examination, subject to all objections?

Mr. Hotz: I call your Honors' attention to the fact that the cross examination of these various publishers is a material part of our case, we figure. There are objections made in connection with some of that testimony, and I am trying to figure out in my mind how to facilitate matters, but at the same time we want that cross examination.

The Court: Why not have the depositions offered and received subject to objections?

Mr. Frohlich: Both as to direct and cross examination.

Mr. Hotz: What I am getting at is, suppose some parts of this cross examination the Court would say was not proper, and if that is the case, in connection with some of these depositions, some of this cross examination, I want to supply other proof of the same thing.

The Court: Could you not offer it on testimony, if not proper cross examination?

Mr. Hotz: But I wouldn't know it if you are going to take these away.

The Court: You can cover it in the statement to the record if you desire, in the event the Court holds that any of [fol. 1389] these objections are not cross examination. In that event, you desire and now offer that part of the cross-examination as your own testimony. I am suggesting that.

Mr. Hotz: That will do it; that is satisfactory, I think.

Mr. Frohlich: I am willing to waive any objection. The whole record can be in as far as I am concerned, everything they elicited can come into this record, and all exhibits. The exhibits are mostly mine. These are my depositions. I am willing to withdraw any objection to any part.

The Court: The record may show that any and all objections interposed on cross examination on the ground that it is not proper cross examination, is waived by counsel.

Mr. Frohlich: Yes, your Honors.

I offer in evidence the depositions taken pursuant to notice in the City of New York of the witness Sigmund Spaeth with all of the exhibits that were submitted, identified and offered by both sides, and with all of the cross examination subject to the stipulation already made, in which I have withdrawn any objection to the cross examination on the ground it is not proper cross examination.

Mr. Hotz: What about the other objections?
[fol. 1390] Mr. Frohlich: The Court can pass on the immateriality.

I make a similar offer of proof as to the direct testimony and the cross examination and all the exhibits, and the same waiver of objection on my part, of the witness Abraham Schwartz who was business manager of Irving Berlin Inc.

I also make the same offer with respect to the testimony of Walter S. Fischer, president of Carl Fischer, with respect to the direct testimony and to the cross examination and the exhibits, and the same waiver of objection.

I also make the same offer with respect to the witness Irving Caesar, with respect to the direct examination and cross examination and all the exhibits, and the same withdrawal of objection and waiver.

I also make the same offer with respect to the deposition of Edwin H. Morris, with respect to the direct testimony, the cross examination, the exhibits, and the waiver of objection.

I make the same offer with respect to the testimony of George W. Meyer, with respect to the direct testimony, the cross examination, the exhibits, and the waiver.

I make the same offer with respect to the witness Ella Herbert Bartlett, with respect to the direct testimony, cross [fol. 1391] examination, the exhibits, and withdraw all objections.

I make the same offer of proof with respect to the witness Will Von Tilzer, with respect to the direct testimony, the cross examination, all of the exhibits, and the same waiver of objections.

I make the same offer of proof with respect to the deposition of Edgar Leslie, with respect to the direct testimony, the cross examination, the exhibits, and the waiver of objections.

With respect to these witnesses I now state they are not within the State of Nebraska.

I make the same offer of proof with respect to the witness Jerome Kern, and Sigmund Romberg, taken in the State of California in 1938, and I make the same offer with respect to the direct testimony—there was no cross examination and no one representing the Attorney General's office in that deposition—and also ask that the exhibits be marked in evidence.

Mr. Hotz: My attention, may your Honors please, has been called to the form of this stipulation on the depositions that were first suggested, and that is that the withdrawal of the objections was limited.

Mr. Frohlich: No; as I understand it, the only limitation was as to whether or not it was proper cross examination. [fol. 1392] I think the Court has a right to pass the materiality and irrelevancy of a matter, which it is cross examination or direct.

Mr. Hotz: The only objections you have raised in your cross examination is the fact that it is not proper examination. Is that the only thing you waive, or not?

Mr. Frohlich: What else do you want us to waive?

Mr. Hotz: The rest of your objections.

The Court: The question as to materiality?

Mr. Hotz: Aside from the question of materiality there are other things here.

Mr. Frohlich: I waive every form of objection except the competency, materiality and relevancy.

Mr. Hotz: That won't do.

Mr. Frohlich: I will give you competency; I don't care about that. But I think materiality and relevancy should be in there. I can't burden the Court with a lot of stuff that doesn't belong here. There were very few objections taken by us. That matter of objections, do you want everything to go in on both sides; have the objections withdrawn on both sides?

Mr. Hotz: No. These were your witnesses.

Mr. Frohlich: Certainly. I am willing to have a clean slate, everything to go in on both sides.

[fol. 1393] Mr. Hotz: Not at all. I am not going to waive the reading of these depositions at all.

Mr. Frohlich: I am trying to save time, that is all.

The Court: Have you made your offer?

Mr. Frohlich: Yes.

The Court: Is there any objection?

Mr. Hotz: Yes.

The Court: What is it?

Mr. Hotz: We object to the offer in reference to the cross examination that has been offered because the stipulation in connection with waiving of the objections is not broad enough to cover the situation, and it postpones the ruling of the Court, your Honors, on the cross examination until after the close of the case.

The Court: Do you wish to offer your cross examination yourself?

Mr. Hotz: Yes, we would like to offer our cross examination.

The Court: Offer it.

Mr. Frohlich: I will consent to have it come in.

Mr. Hotz: Offer the cross examination of each of the witnesses in which the direct examination has been offered by Mr. Frohlich.

Mr. Frohlich: We consent to it.

The Court: The direct and cross examination of the witnesses as shown by these depositions is received.

What else?

Mr. Frohlich: I just want to make the statement, your Honors, that all of the witnesses mentioned in these depositions reside out of the state, more than one hundred miles from this state, and they are not available for trial at this time, and not within one hundred miles of this court.

The Court: I guess there is no objection.

Mr. Frohlich: With that, your Honors, the plaintiffs rest.

Mr. Hotz: In connection with the status of the record on these depositions, let the record show that these witnesses were, of course, the complainants' witnesses; in our offer of the cross examination it isn't our intention in the manner in which these offers have been made, that the defendant should be bound by the statements made of those witnesses, excepting in reference to the matters on cross examination.

The Court: You offer that as cross examination and not otherwise?

Mr. Hotz: As cross examination and not otherwise.

Mr. Frohlich: The plaintiffs rest.

(Whereupon, at the conclusion of the complainants' evidence, the defendants, in order to maintain the issues on [fol. 1395] their behalf to be maintained, presented the following evidence).

Mr. Hotz: Might I read these cross examinations?

The Court: I don't want you to take the time to read them if we can avoid that.

Mr. Frohlich: I thought, your Honors, we had settled that.

The Court: Probably either side will state substantially what it contained and what their claim is with reference to the proof of these depositions. We wouldn't like to have you offer the cross examination and read it without the other, because you announce your offer as only the cross examination.

Mr. Hotz: We will pass it for the time being.

The Court: All right.

Mr. Hotz: The record shows there were a number of interrogatories propounded in accordance with the terms of the statute to the others, and they answered a large number of those interrogatories and supplied the information that was wanted. On balance of them the various witnesses stated that they would have it present here in the Court room the day called for, if the Court ruled that it was material. There are sixty-three of those interrogatories. [fol. 1396] At this time I would like to read those interrogatories. I don't see how we can avoid that.

The Court: Very well.

Mr. Frohlich: We can avoid it if I consent to them. I will consent that we could dispense with the reading of these interrogatories. There are four sets of them, and I will consent to have everything in there go in that is in. I objected to some of the interrogatories because I felt they were improper and asked a thing they were not entitled to. As to those, we can have a ruling of the Court. I have given them a tremendous amount of material in there.

The Court: Is some of it in the nature of repetition of testimony you already have?

Mr. Hotz: Some. For example, we asked for the list of the publisher members of their organization. We have got that in.

Mr. Frohlich: Whose have you got there; Buck's?

Mr. Hotz: Yes. These others are not very long; they are very short.

The Court: I assume you refer only to those you think now are material?

Mr. Hotz: Yes.

(Interrogatory Number 1 read by Mr. Hotz).

[fol. 1397] The Court: I am wondering if it hasn't been covered pretty well by the testimony?

Mr. Hotz: Yes.

The Court: Why not waive it now in view of the testimony already in?

Mr. Hotz: The purpose of that question, your Honors please, is, of course, to show the development of the Society.

The Court: That is already shown.

Mr. Hotz: No, it is not, we don't have it in there. It shows only from these exhibits here.

The Court: That is largely the testimony of Mr. Buck, isn't it?

Mr. Frohlich: They can develop that from Mr. Buck. Even Mr. Buck couldn't give them those jobs; it would be an enormous job, and would have to go back to 1914 and give them a list of the members.

The Court: Did I understand you to say you agreed they could introduce all of these and there was no objection to them?

Mr. Frohlich: I said I would agree to the present interrogatories, to all the exhibits and answers that are in there, with the exception as to those I objected to I want the Court to make a ruling. The Court will realize what my friend has asked for is a period of twenty-five years and [fol. 1398] would show nothing of a useful purpose. Mr. Buck took the stand and that showed a great deal of the twenty-five years, and he was subject to cross examination.

The Court: In view of the testimony already introduced and the present state of the record, the objection is sustained.

(Interrogatory Number 2 read by Mr. Hotz).

The Court: That will be sustained.

(Interrogatory Number 3 read by Mr. Hotz).

Mr. Frohlich: That has been answered.

Mr. Hotz: They have complied with that.

(Interrogatory Number 4 read by Mr. Hotz).

Now, that they object to, they say.

Mr. Frohlich: Read the objection.

(Objection read).

Mr. Hotz: Now, that asks for the list of the copyrighted musical compositions or arrangements owned or controlled by their author members.

Mr. Frohlich: That is Number 4, isn't it? Read the question again.

(Interrogatory Number 4 re-read).

The man says he can't give it to you and doesn't know it.

The Court: Is that the answer?

Mr. Frohlich: That is the answer.

(Interrogatory Number 5 read by Mr. Hotz).

Mr. Frohlich: That is in evidence, also.

[fol. 1399] The Court: There is no objection to this?

Mr. Hotz: No.

The Court: Why not read right on?

(Interrogatory Number 6 read by Mr. Hotz).

(Interrogatory Number 7 read by Mr. Hotz).

(Interrogatory Number 8 read by Mr. Hotz).

Mr. Frohlich: That Exhibit Number 5, your Honors, is merely a part of this great big box which was not received in evidence. This is bringing that down to date. I have no objection to putting it in evidence, but we couldn't give them any more, your Honors.

Mr. Hotz: I call attention to the Court to the fact that this is what we have been given as a substantial compilation of their compositions. I call the attention of the Court to the fact that it is here.

(Interrogatory Number 9 read by Mr. Hotz).

(Interrogatory Number 10 read by Mr. Hotz).

Mr. Frohlich: It doesn't say exactly that. Exhibit Number 11 has been confused with Exhibit Number 5.

(Interrogatories Numbers 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 read by Mr. Hotz).

The Court: Do you think there is anything disclosed by these answers not fully covered by the testimony either on direct examination or cross examination of this same witness?

[fol. 1400] Mr. Hotz: Probably not; there are one or two things. The evident purpose we had in connection with those interrogatories was to show the enormity of the thing, they are so vast, and the very fact that they could

not furnish them. We thought it might have some probative force, I suppose.

What I would like to do, if the Court will permit it, is to take these with me tonight. It is 5:00 o'clock and I am supposed to go ahead and get some witnesses down here tonight from Omaha. I believe that if I could take these and sit down—

The Court: As a matter of fact you want to continue until tomorrow morning?

Mr. Hotz: No. More than that, I will spend the time, your Honors, if you will believe me, in really going through these interrogatories and seeing if I can't simplify this thing. The interrogatories were the result of a lot of lawyers wanting to ask questions and get their ideas in. A large number of persons are interested in it, and I must confess some of those I can't answer as well as I would like to, and I think if I take the time this evening I will simplify this thing by morning and come in with two or three more, and maybe none, and present them to the Court.

[fol. 1401] The Court: You have nothing else to present this evening?

Mr. Hotz: No.

May I take these out of the court room?

Mr. Frohlich: There is no objection.

The Court: The Clerk will check them with you.

(Whereupon an adjournment was taken until 9:30 o'clock A. M., Wednesday, September 20, 1939.)

[fol. 1402] (At 9:30 o'clock A. M., Wednesday, September 20, 1939, Court convened pursuant to adjournment, all parties present as heretofore, and the following proceedings were had, done and entered of record, to-wit:)

Mr. Te Poel: If the Court please, the Clerk called our attention this morning to the fact that the State Treasurer has died within the last few weeks, who was a defendant in this case, and has been succeeded by John Havekost, the duly appointed and qualified and acting Treasurer. The complainants now move that because of the death of the defendant Bass that John Havekost be made party defendant in this action in lieu of the defendant Bass.

Mr. Frohlich: Plaintiffs consent.

[fol. 1403] JOSEPH MALEC, was called as a witness on behalf of the defendants, and after being duly sworn, testified as follows:

Direct examination.

By Mr. Hotz:

Q. State your name.

A. Joseph Malec.

Q. Where do you reside?

A. Omaha, Nebraska.

Q. What is your business?

A. Amusement.

Q. Do you have an amusement park in the City of Omaha or near the City of Omaha, and if so, what is its name?

A. I have a park under the name Peony Park.

Q. Where is that located?

A. It is located west of Omaha.

Q. What street number?

A. 78th and Dodge Streets.

Q. What is its business?

A. Dancine and swimming and picnicking.

Q. About how many persons attended your dance pavilion, indoor and outdoor, last year?

A. About one hundred thousand.

Q. Is there an association in the State of Nebraska of persons engaged in similar lines of business as yourself, and if so, what connection do you have with it?

[fol. 1404] A. I am the president of the association of Nebraska Amusement Men's Protective Association.

Q. When was that organization formed?

A. The organization was formed in 1936.

Q. What was the purpose of its organization.

A. The purpose of the forming of the organization was to get relief from the ASCAP association.

Q. In what manner?

A. To seek relief from the power that the ASCAP exercised over all the people interested in playing music for public performance.

Q. In the State of Nebraska?

A. In the State of Nebraska.

Q. How long have you been in the amusement business?

A. Eighteen years.

Q. In your experience have you had occasion to get statistics and estimate the number of persons interested in dancing and that do dance in the State of Nebraska?

A. I would say about one-third of the population in the State of Nebraska dances.

Q. Did you organize or yourself individually have anything to do with the introduction of the bill that is before this Court, Legislative Bill No. 478?

Q. Yes, I had.

Q. Just state what part you had in connection with it.

A. I organized the amusement people in the State of Nebraska to form this bill. This bill was presented by Mr. Frank Brady.

[fol. 1405] Q. In the preparation and introduction of that bill through Mr. Brady did the broadcasters of Nebraska or the National Association of Broadcasters have anything to do with it; were they consulted at the outset?

A. No.

Q. Was it taken up with them at all in any way?

A. Later we asked them to join us in forwarding the bill that Mr. Brady introduced.

Q. Mr. Malec, are you an employer of music in your establishment for dancing purposes?

A. Yes.

Q. To what extent? Just about the number of orchestras and the amount of time your organization puts in in the employment of music.

A. Well, our establishment uses music during the summer time, six days a week, for a period of three months, and the rest of the year we use music twice a week.

Q. To what extent do you pay out money for orchestras and bands per annum at the present time?

A. Well, yearly we pay about fifteen thousand dollars—approximately around that figure for music.

Q. You have, do you not, an outside dance pavilion and an indoor dance pavilion?

A. We have an outdoor dance pavilion and an indoor dance pavilion.

Q. Were there any other organizations at the time this bill was introduced that were interested besides yourself and your organization, and if so, who?

[fol. 1406] A. In introducing this bill we had the support of the Czech societies and of the German, and various in-

dividuals that had something to do with the use of music directly and indirectly in the past years.

Q. Why were the Czech societies called in, if you know?

A. The Czechs have a great number of dance places throughout the state and they were interested.

Q. The same with the German society?

A. Yes.

Q. Did the theatre or motion picture operators have anything to do with it, and if so, state what?

A. I approached their association on it but they were afraid to come out openly and assist us in presenting the bill.

Mr. Frohlich: I move to strike out "they were afraid".

The Court: It may stand.

Q. Did you have any conversation with any member officially of that organization, that is, the motion picture theatre men's association, and if so, with whom and where with reference to this bill?

A. I talked twice with Mr. Williams.

Mr. Frohlich: I object to any such conversation on the ground it is hearsay.

The Court: He is not giving any conversation.

Mr. Frohlich: He was just about to give a conversation.

Q. Was Mr. Williams their president?

A. Yes.

[fol. 1407] Q. Where was the first meeting held, and generally who was present at the time you undertook to sponsor a bill in the Nebraska Legislature?

A. The first meeting was held in Omaha.

Q. You were present at that meeting?

A. Yes.

Q. Were there any of the broadcasting people present at that time?

A. I called in just the dance people of the state at the time.

Q. Now, have you had any dealings with ASCAP, that is Peony Park, Inc., and yourself personally, in the past years, and are you having any dealings with them at the present time?

A. Yes, I had dealings with the ASCAP for about eighteen years.

Q. Are you operating now under one of their licenses?

A. Yes.

Q. What amount of money are you paying annually to ASCAP?

A. Two hundred and fifty dollars, I believe.

Q. Per year?

A. Per year.

Q. Who were your dealings with as far as ASCAP was concerned, what member of its organization?

A. Mr. Eugene Blazer.

Q. Now, did you operate for a time prior to your present contract without a license? Was there a time that you didn't have a license and paid them money?

A. Yes.

[fol. 1408] Q. How long a time was that, and how much did you pay them?

A. We started out years ago with the fee of sixty dollars. Then this fee was raised from time to time. Years ago there was no contract signed by us with Mr. Blazer.

Q. Did you ever have any controversy with ASCAP in connection with this amount of money that was paid by you for the public performance rights?

A. Yes, at various times I protested to Mr. Blazer about the fee asked by him for playing the music.

Q. And what did he say?

A. Well, just a statement for the yearly dues, and they said they were raised from sixty dollars to the present charge, and whenever I took it up with him as to why the added charge, well, several times he told me that I should be glad he doesn't charge me one thousand dollars; that he was in charge of how much I am to pay.

Q. Did you or Peony Park or the members of your association ever take up with ASCAP in New York, or any of its Board of Directors through yourself or any national organization the matter of the terms or conditions of the contract that you now have with ASCAP?

A. No.

Q. At any time within the past few years have you refused to pay ASCAP?

A. Yes, I refused to pay them several times.

Q. And what happened?

A. I was always threatened with a suit, and I was sued on two accounts.

[fol. 1409] Q. In the United States District Court at Omaha?

A. Yes, sir.

Q. For infringements?

A. Yes, sir.

Q. And those suits were dismissed, were they?

A. Yes.

Q. And you signed the contract?

A. Yes.

Q. Now, why did you sign the contract with ASCAP? Why do you deal with them at all?

Mr. Frohlich: I object to that as calling for a conclusion, and speculative.

The Court: I think he may answer. You brought out proof that it wasn't necessary that they had public domain to draw from.

A. Just couldn't get along without the music, so there was nothing else for me to do but sign.

Q. Do you know about what percentage or amount of the kind of music that your organization uses is controlled by ASCAP through the public performance rights?

A. Well, I have been told by Mr. Blazer that practically all the music is controlled by the ASCAP.

Q. Speaking now of popular dance music?

A. Yes.

Q. And of your own personal knowledge, what are the facts as you have found them?

A. I think he speaks the truth.

Q. At the time this bill came on for hearing in the [fol. 1410] Legislature do you know whether or not there were public hearings held before various legislative committees in connection with it, and before its final passage, or not?

A. Yes.

Q. Did you attend any of those meetings?

A. Yes, I did.

Q. Did you have an opportunity to observe whether or not other persons attended it, and if so, generally who, without going into too much detail?

A. Going over the bill before the committee, the assembly hall was filled to capacity, and I know that there was great interest among many people that traveled a long distance to be there at that meeting, from various points.

Q. That lived in Nebraska?

A. That lived in Nebraska?

Q. Was ASCAP represented at those hearings?

A. Yes.

Q. And did they present their side of the matter?

A. Yes, they did.

Q. Do you know whether the matter was debated on the floor of the Legislature before the bill was passed?

A. Yes.

Q. Did you hear it?

A. Yes.

Q. You were present?

A. Yes.

Q. You heard the various sides presented by various legislators?

A. I did.

[fol. 1411] Q. Do you know what the final vote on the bill was?

Mr. Frohlich: I object to that.

The Court: Sustained.

Mr. Hotz: Did I understand that counsel objected on the ground of incompetency, and if so, I will concede that?

The Court: As I understood it, there was no objection at all. The bill was passed and I don't think it makes much difference how much majority it had.

Q. When you employ music, Mr. Malec, what control do you exercise as a proprietor over the musicians in regard to the style and kind of music they play?

A. I exercise no power over the music that the orchestra brings along when they play their engagement.

Q. How do you negotiate with your musicians?

A. Well, some bands are booked directly, and some bands we get through their bookers.

Q. Booking agencies?

A. Booking agencies, yes.

Q. The point I want to bring out, Mr. Malec, is whether or not if these musicians are individual musicians or employees of yours, and do you pay each one separate or do you just give a check to the booking agency or to the band leader for the contract price for the term that they play?

A. The men are never individually paid. The pay goes to the contractor or the leader of the orchestra.

Q. You do not control the amount of money each individual musician gets?

[fol. 1412] A. No, I don't.

Q. Would you be able to run and operate your establishment in the State of Nebraska without music?

A. I couldn't do that—I would have to have music.

Q. Would you be able to run and operate your establishment without ASCAP?

Mr. Frohlich: I object to that as not qualified, and highly speculative. The witness is not qualified to testify to that.

The Court: Overruled.

A. I could not run without the music of ASCAP.

Q. What is the principal objection you have, Mr. Malec, in your dealings with ASCAP? What are you complaining about, what is the chief difficulty and why did you organize and have this bill introduced in the State Legislature; what is the trouble?

A. I felt that the unlimited power exercised by the representative was detrimental and unjust to the business, and dangerous.

Q. In what manner?

A. The attitude and position Mr. Blazer took in telling me that he would have the right and power to ask one thousand dollars as a fee for a park to pay.

Mr. Frohlich: Can you fix the time and place of that conversation?

The Court: About the time and place.

The Witness: Oh, Mr. Blazer made statements of that type several times in the past years.

[fol. 1413] Q. When did he make them?

A. He would always make them at a time when we would get into—about the time when he was sending us a statement and I would refuse or argue this fee with him, telling him we had difficulties these days to carry on our business, and he would take the attitude that we were very fortunate that he wasn't charging us more.

Q. Do you have an opportunity at the present time to deal openly for music with any other persons that you know about, any publisher or catalog or anything of that sort?

A. Well, at the present time I don't know if I could deal

with anybody else as long as we are paying this fee to ASCAP.

Q. I didn't have that so much in mind, Mr. Malec; I said do you desire to select your music from the catalogs of different publishers and chose your own style and class of music? Would you like to do that?

A. Yes, I would prefer that.

Q. And are you able to do that now under your arrangements with ASCAP?

A. I don't think so.

The Court: Mr. Malec, do you know of any competitors of this ASCAP organization who are in the market with music for musical selections.

The Witness: I don't.

The Court: Have you been solicited by representatives through the mail or in person or music concerns offering to sell music?

[fol. 1414] The Witness: About three years ago I received a letter from Warner Bros. They were telling me in the letter that they wanted a fee of a hundred and fifty dollars from the Park for playing music—their music, but at that time we just ignored the letter, and there was nothing more heard by us from Warner Bros.

Q. When was that?

A. I would say about three years ago.

Q. What was the result of that, if you know? Did you get any notification in connection with that matter from ASCAP?

A. No. I received a letter from Warner Bros.

Q. What did they say?

A. They were telling me they were divorcing themselves from ASCAP, and they wanted us to pay them a hundred and fifty dollars for playing their music.

Q. I mean after that did they go back in ASCAP?

A. I understand they did.

Q. You never received any more letters from them, anyhow?

A. No.

Q. How many members of your organization are there in the State of Nebraska?

A. About two hundred and forty.

Q. You are speaking now of the Amusement Men's Protective Association?

A. Yes.

Q. Of which you are president?

A. Yes, sir.

[fol. 1415] Mr. Hotz: I think that is all.

Cross-examination.

By Mr. Frohlich:

Q. Mr. Malec, when did you go into business in Peony Park?

A. Oh, I had Peony Park for about twenty-four years.

Q. You were there in 1921?

A. Yes.

Q. Did I understand you to testify you paid ASCAP moneys, but never had a contract in the early days?

A. There were some days we did not have a contract.

Q. Did you have a contract in 1921?

A. I could not say.

Q. I show you this document and ask you whether you recognize the signature?

A. Yes.

Mr. Frohlich: I will offer in evidence plaintiffs' Exhibit Number 42.

Q. It is your signature?

A. It is "Malec Bros." on there.

Q. In your handwriting?

A. Yes, sir.

Mr. Hotz: Objected to as immaterial.

The Court: Overruled.

Q. You had a similar contract in 1922, did you? Look at this document and look at the signature and see if it is yours?

A. Yes, sir.

Mr. Frohlich: Offer in evidence plaintiffs' Exhibit Number [fol. 1416] ber 43.

The Court: Is there any reason for encumbering the record with that? It is similar to others.

Q. Mr. Malec, under this first contract, plaintiffs' Exhibit Number 42, you paid thirty dollars a year, is that right? Look at it.

A. I thought it was sixty dollars—I had forgotten.

Q. And under your second contract in 1922 you paid fifty dollars a year, didn't you?

A. Yes.

Q. Your business was growing, wasn't it?

A. Yes.

Q. You don't want this Court to believe that you were as large an establishment in 1921 and 1922 as you are today?

A. No.

Q. You were a small dance hall in those days, weren't you?

A. Well, we have done a lot of business during the summer time.

Q. Did you employ orchestras in those days at substantial salaries?

A. No.

Q. How did you furnish music to your patrons?

A. We had to pay for the music.

Q. How did you operate the music, by what means; with an orchestra?

A. With an orchestra.

Q. A small orchestra?

A. Well, nine to ten pieces.

[fol. 1417] Q. In those days?

A. Yes, sir.

Q. What did you pay the orchestra, on the average?

A. Well, in those days five to six dollars a man a night.

Q. How much would that run into a week or month?

A. Ten men would be fifty-five dollars, something like that, a night.

Q. It would be about three hundred dollars a week?

A. Yes, sir.

Q. Fifteen thousand dollars a year?

A. Well, around those figures.

Q. You increased your business as you went along, didn't you?

A. Some years we did, yes.

Q. What admission did you charge in 1921?

A. One dollar a couple.

Q. And on the average how many people came into your establishment a week?

A. Well, in those days we danced four nights a week.

Q. You only operated four nights?

A. Four nights.

Q. And how many people came in of an evening?

A. Well, anywhere from, say, sixty couples up to two hundred and fifty or three hundred couples on Saturday night.

Q. Do you now operate on four days a week?

A. We now operate two nights a week.

Q. In the summer time, how do you operate?

A. Operate six nights a week then.

[fol. 1418] Q. In winter time?

A. Two nights a week.

Q. What do you charge admission now?

A. Forty cents a person.

Q. Eighty cents a couple?

A. Some nights thirty cents; some nights forty cents; Saturdays, fifty cents.

Q. How many people come into your establishment on a week night?

A. Again, it will run probably one hundred couples and up to four or five hundred couples on Saturday nights; six hundred couples sometimes.

Q. What gross business did you do in 1921 and 1922 and 1923 and those years, approximately?

A. I couldn't recall that.

Q. Well, did you do as much as twenty-five thousand dollars a year?

A. I say that is going pretty far back—I don't know what business we did do.

Q. Have you no recollection of what you did in 1925, 1926 or 1927?

A. I wouldn't want to say the figures.

Q. Well, you testified you now do about one hundred thousand a year, is that right?

A. One hundred thousand attendance a year, one hundred thousand paid customers.

Q. Did you do one hundred thousand attendance in 1921 and 1922?

A. No.

[fol. 1419] Q. You did considerably less, didn't you?

A. Yes.

Q. Your business increased over the years, isn't that right?

A. Yes.

Q. And from time to time Mr. Blazer asked you to pay larger sums, didn't he?

A. Yes.

Q. You know there were other dance halls in and around Omaha? You are familiar with the territory, aren't you?

A. Yes.

Q. You know you have competitors in this territory, isn't that right?

A. Yes.

Q. You know you have some large competitors and some small competitors?

A. Right.

Q. You knew right along the large dance halls were paying more than the small dance halls, isn't that right?

A. Yes, sir.

Q. You expected they should pay that, didn't you?

A. I didn't expect them to pay, the small ones.

Q. Well, didn't you expect a small dance hall to pay proportionately, and a larger dance hall to pay more?

A. Yes. Some paid, and some didn't pay anything at all.

Q. You had a large dance hall, didn't you?

A. Yes.

Q. You were one of the leading dance halls in the State [fol. 1420] of Nebraska, isn't that right?

A. That is true.

Q. You charge an admission to the Park in addition to the dance floor, don't you?

A. Yes, sir.

Q. What do you charge now?

A. Ten cents in the summer time. Now, the season is over.

Q. So that a customer has to pay you ten cents, twenty cents a couple, to get in the Park, and eighty cents to dance; that is one dollar, isn't it?

A. Tuesday nights they pay twenty cents to get in the Park, and get in to dance for fifty cents; that makes seventy cents a couple.

Q. Now, you said on Saturday nights you have had as many as four hundred people in the place?

A. Four hundred couples.

Q. That would mean an increase, approximately, between three and four hundred dollars, isn't that right?

A. Yes.

Q. The chief expense is the orchestra, isn't it?

A. Yes.

Q. You still pay about fifteen thousand dollars a year for that orchestra, is that right?

A. Yes.

Q. You also sell refreshments in the Park?

A. Yes.

Q. And you make a profit out of that?

A. We hope to.

Q. You sell drinks?

A. Yes.

[fol. 1421] Q. And sell food?

Mr. Hotz: You don't sell hard liquor, do you?

The Witness: No.

Q. You sell beverages and food?

A. Yes.

Q. Now, you organized this Amusement Protective Association of Nebraska, didn't you?

A. Yes.

Q. When did you organize it?

A. 1936, I think.

Q. Now, before you organized that, did you have any correspondence with any other body or association regarding ASCAP?

A. I had a lot of conversation with men operating different places.

Q. Did you have any correspondence with anybody on the subject?

Mr. Hotz: Just a minute. I object to that unless counsel states with whom.

Q. That is what I am trying to find out.

The Court: Overruled.

A. I don't think so.

Q. Did you get any letter from the National Association of Broadcasters?

A. No.

Q. Did you get any letters from anybody representing the National Association of Broadcasters?

A. None prior to our organization.

Q. Well, did you get them after the organization?

A. No.

[fol. 1422] Q. Did you get them at any time?

A. I don't believe we had any correspondence from the broadcasters.

Q. Who prepared the bill presented to the Nebraska Legislature?

A. Mr. Brady.

Q. Who is he?

A. One of the Representatives, State Representatives.

Q. Did you ever see the bill before it was presented?

A. Yes.

Q. Where and when?

A. I seen it before it was presented, of course.

Q. Who showed it to you?

A. Between Mr. Brady and myself and a lot of other people interested in the bill.

Q. And they did you in March, 1937 circularize the members of your Protective Association with reference to the bill?

A. Yes.

Q. I show you a document and ask you whether that is the document you sent out to your members?

A. Yes, that is one of them.

Mr. Frohlich: I will offer in evidence plaintiffs' Exhibit Number 44.

Mr. Hotz: Objected to as immaterial.

The Court: Overruled.

Q. Do you remember this part of the letter, "Our first big problem is the promotion of the bill 478 which will protect us against the payment of the so-called license to play copyrighted music at public performances for profit. [fol. 1423] We have been forced to pay the American Society of Composers, Authors and Publishers long enough, and we believe that if we all do our part we will be able to keep this graft out of the State of Nebraska." Do you remember that?

A. Words to that effect.

Q. You dictated this, didn't you?

A. Yes, sir.

Q. This was a form of graft in your estimation, wasn't it?

A. That is what it says there.

Q. You were paying two hundred and forty dollars a year for this graft, weren't you?

A. Yes.

Q. You were paying fifteen thousand dollars for an orchestra, weren't you?

A. Yes.

Q. The orchestra played music for you at each performance for your patrons?

A. Yes, sir.

Q. For two hundred and forty dollars graft that you were paying you had a license to a great many musical compositions, didn't you?

A. That is what Mr. Blazer said.

Q. Nobody ever sued you for a copyright, did they?

A. I was threatened practically every year.

Q. Were you threatened by anybody outside of the American Society for infringement of a copyright?

A. No.

Q. You never paid a cent of damage for infringement of a copyright, did you?

A. No.

[fol. 1424] Q. As a matter of fact, you didn't bother your head about the music you were playing in your establishment?

A. Yes, sir.

Q. Well, you left it to the orchestra leader, didn't you?

A. Yes.

Q. You import a lot of bands outside of the state?

A. Yes, sir.

Q. You still do that?

A. Yes, sir.

Q. You just gave the orchestra leader carte-blanche and told him to go ahead and play what he wanted, didn't you do that?

A. Yes, sir.

Q. Are you a musician?

A. No.

Q. Do you know anything at all about music?

A. Some.

Q. Did you ever keep a log or record of the pieces you played?

A. No.

Q. Did you ever tell your orchestra leader to confine himself to any particular kind of music?

A. I told him the tempo of music I would like to have him play.

Q. You told him you wanted dance music?

A. Yes, sir.

Q. And you left it to his discretion what kind he would play?

A. Yes, sir.

Q. Did you ever look at the sheets of music to see who owned the copyrights?

A. Oh, I believe I looked at some sheet music.

[fol. 1425] Q. When?

A. Occasionally if I get around to see what number they are playing.

Q. Didn't a time come when you discontinued paying ASCAP any money for a license?

A. Yes.

Q. And you were sued for infringement by Mr. Blazer on behalf of the members of ASCAP?

A. Yes, sir.

Q. That one suit went on for how long a period?

A. Well, the suit was started but it wasn't finished.

Q. How many months did it drag along?

A. Well, it was during that time we were introducing that bill, probably three months.

Q. During those three months you were not paying ASCAP a penny, were you?

A. No. It was all pending.

Q. During that three months you were running your establishment, weren't you?

A. Yes, sir.

Q. While running the establishment you were having an orchestra play music?

A. Yes, sir.

Q. During those three months when no license from ASCAP was had, did you take the trouble to investigate the kind of music being played in your establishment?

A. No.

Q. Didn't you know as a matter of fact that a great many compositions played belonged to members of ASCAP?

[fol. 1426] A. I think they did.

Q. You knew that. It didn't make any difference to you, did it?

A. Not at the time, no.

Q. Did you pay anybody for that music?

A. I think I settled it afterwards.

Q. Did you pay any author, composer or publisher a penny in all your life outside of ASCAP for the use of any music in your establishment?

A. No.

Q. Did you ever make an effort to find out whether any author, composer or publisher had his music played in your establishment? Did you ever make any effort to find that out?

A. Oh, I was told that the music was all handled——

Q. (Interrupting) Did you ever make an effort to find out who owned any music in your establishment?

A. No.

Q. Did you ever make an effort to pay any composer, author or publisher a license fee for the use of music in your establishment?

A. No.

Q. Assuming that the ASCAP cannot do business in this State under the present law, and you want to continue running your business, how would you go about protecting yourself against infringement suits? What would you do?

A. Well, if the whole State of Nebraska was situated as I would be, I don't think it would make much difference.

Q. What would you personally do to protect your business establishment and your investment if there were no ASCAP today?

[fol. 1427] A. I don't know. I think I am at the mercy of ASCAP.

Q. Suppose you wouldn't be at the mercy of ASCAP and there was no ASCAP in the State of Nebraska, what would you do about furnishing music to your patrons? Would you still have an orchestra?

A. I don't know what I would do.

Q. In other words, if there were no ASCAP you couldn't run your business, isn't that right?

A. I guess that is right.

Q. Would you make any attempt to get music from other sources?

A. I would have to.

Q. Have you ever made any attempt in your life to get music from the public domain or music that belonged to others than ASCAP.

A. No, I didn't.

Q. Now, if there were no ASCAP and you wanted to perform this music, you wouldn't want to infringe on anybody's rights, would you?

A. No.

Q. You are a law abiding citizen, aren't you?

A. Yes, sir.

Q. And want to do business legally and properly?

A. Yes, sir.

Q. And if there were no ASCAP in the State of Nebraska or anywhere, what would you do to protect yourself against infringing on somebody's rights with respect to music?

A. Well, we would have to play music that ASCAP has nothing to do with.

[fol. 1428] Q. Well, whose music would you play?

A. I believe there would be some authors come forward contributing their knowledge to the musical world.

Q. Now, you know there are a great many compositions that are not copyrighted, don't you?

A. I think there are some, yes.

Q. And as to the compositions that are not copyrighted by members of ASCAP, you would have to negotiate separate licenses with these people, wouldn't you?

A. We would have to buy music that we know doesn't belong to ASCAP.

Q. And you would have to negotiate separately with the owners of copyrights for the privilege of playing the music, wouldn't you?

A. I think our orchestras would have to.

Q. Either you or the orchestra?

A. Yes, sir.

Q. How many numbers do you play in a night?

A. Probably thirty-five.

Q. You play about thirty-five numbers one night, and play some of the same numbers the next night. How many numbers a week?

A. Multiply that by six—two hundred numbers, but most of them are repeated again.

Q. Would it be fair to say between one hundred and two hundred numbers?

A. Yes.

Q. If there were no ASCAP and you had to negotiate [fol. 1429] with respect to one hundred to two hundred numbers each week, how would you have to commence your negotiations?

A. I don't think it would be necessary to have as many numbers.

Q. Suppose you cut it down a half, you would have to negotiate for some reasonable time prior to the performance in your establishment, wouldn't you?

A. I expect so.

Q. You would have to employ somebody for that, wouldn't you?

A. Oh, I think things would work out somehow.

Q. Would you, yourself, be willing to give up your time for negotiating a license for music in your establishment?

A. No, I wouldn't have the time for that.

Q. You would have to employ somebody for that purpose, wouldn't you?

A. Yes.

Q. You would have to pay a salary for that, wouldn't you?

A. I expect so.

Q. What would you think you would have to pay some man in your establishment to clear your copyrights?

A. Well, Peony Park wouldn't want to go into the music business.

Q. You wouldn't want to go to too big an expense?

A. No.

Q. But if no ASCAP, and if you had to clear the rights, wouldn't you have to employ somebody at a substantial salary?

A. If there were no ASCAP, I think the state would get some music—you could get a great deal of music.

[fol. 1430] Q. Isn't it a fact that today with ASCAP there is a great deal of music which doesn't belong to ASCAP?

A. I don't know how much music I could get today. I was told by Mr. Blazer that ASCAP controls practically all the music.

Q. He told you that?

A. Yes, sir.

Q. Did you make any effort to find out whether that was true or not?

A. He told me they controlled about a million and a half numbers.

Q. A million and a half numbers?

A. A million numbers, yes.

Q. Did you ever make any effort to find out whether there was any other music outside of ASCAP?

A. I expect there are some musical compositions not controlled by ASCAP.

Q. You know there is, don't you?

A. The popular music is all controlled by ASCAP.

Q. You didn't make any effort because you didn't have to?

A. That is right.

Q. The ASCAP license protected you, didn't it?

A. I was on the payroll.

Q. For that two hundred and forty dollars you got complete protection against all infringement?

A. Yes, sir.

Q. And you feel you did?

A. Yes, sir.

[fol. 1431] Q. You were never bothered or paid any damages?

A. Right.

Q. You felt that paying two hundred and forty dollars against fifteen thousand dollars for an orchestra, was graft?

A. Yes, sir.

Q. You said that?

A. Yes, sir.

Q. You still feel it is?

A. Yes, sir; I feel it is unjust.

Q. In other words, you wouldn't want to pay anything for it?

A. I would want to pay it some other way.

Q. How would you want to pay it some other way, and what way?

A. In such a way that no man could tell me he can charge me whatever he wants and I have to pay it, or else.

Q. Well, did Mr. Blazer ever ask you for one thousand dollars for a contract?

A. He said he could ask me.

Q. He didn't tell you he wanted you to pay it; he didn't tell you he wanted you to pay one thousand dollars?

A. He told me I ought to pay one thousand.

Q. Did you ever make a contract for one thousand dollars?

A. No.

Q. He told you he could charge one thousand dollars, isn't that right?

A. Yes, sir.

Q. He never asked you to pay one thousand?

A. No.

Q. You never paid one thousand dollars?

[fol. 1432] A. No, I never paid one thousand dollars.

Q. You were very resentful every time he increased your rates over the years?

A. Right.

Q. You argued with him bitterly about it?

A. Yes.

Q. In all these years did he jump your rates very high?

A. I asked him for a reduction the last three years, because business was not what it was four or five years ago, but I couldn't get it.

Q. What do you take in a year in dollars and cents, this last year, 1938?

A. We lost money in 1938.

Q. Did you lose money in 1937?

A. We made some money but not very much.

Q. How much did you make?

A. We made about four thousand dollars net.

Q. What was the gross amount of money you took in in 1938 in dollars and cents, approximately?

A. I don't know. We probably took in around seventy or eighty thousand dollars.

Q. And you say out of the seventy or eighty thousand dollars you lost money?

A. Yes.

Q. Did you draw a monthly salary?

A. Yes.

Q. What did you draw?

A. Three hundred dollars a month.

[fol. 1433] Q. Thirty-six hundred dollars a year?

A. Yes, sir.

Q. Did any other member of your family draw any money out of that company in 1938?

A. Yes.

Q. Who?

A. My brother.

Q. How much?

A. The same amount.

Q. Between you, you drew out seven thousand dollars in the way of salaries out of the business?

A. Yes, sir.

Q. Did anybody else draw any money out of the business?

A. We have sixty-five people working for us.

Q. You say you lost money on the gross business that year?

A. 1938, yes.

Q. In 1937 did you draw a similar amount?

A. Yes.

Q. Did your brother draw the same amount?

A. Yes.

Q. You made four thousand dollars in addition?

A. Yes, sir.

Q. In 1936 what was the gross business you did in that year?

A. Somewhere near the same figure.

Q. You had the same drawings?

A. Yes.

Q. Did you make any money that year?

A. A little.

[fol. 1434] Q. How much?

A. Four or five thousand dollars.

Q. As a matter of fact, you have been making a profit in addition to your drawings practically every year, haven't you?

A. In that we have swimming and other things.

Q. Taking everything into consideration in that Park, you have been making money there, haven't you?

A. Some, yes.

Q. You have been running that park for over twenty years, and it is a profitable business today, isn't it?

A. Not today.

Q. Would you say in 1939 it was unprofitable for you?

A. I don't know how this will be, but not very profitable, I don't believe.

Q. Have you been drawing your weekly drawings?

A. Yes, sir.

Q. And is your brother drawing his?

A. Yes, sir.

Q. Is anybody else drawing anything in 1939?

A. We are the officers.

Q. And you completely control the company?

A. Yes, sir.

Q. Have you been paying any license fee in 1939?

A. I think we paid.

Q. You paid in 1938?

A. Yes, sir.

Q. Would you say the payment of two hundred and forty [fol. 1435] dollars in any way affected your business?

A. It is two hundred and forty dollars.

Q. It hasn't hurt your business any, has it?

A. Well, we may be forced to operate only one night a week this winter.

Q. That is true practically every winter, is it not?

A. We used to run four nights a week.

Q. Isn't it due to general conditions around Omaha?

A. Possibly.

Q. It isn't due to the two hundred and forty dollars you are paying, is it?

A. There is still two hundred and forty dollars there, and we are doing less business.

Q. Now, suppose there were no ASCAP in Nebraska, and the individual members of the Society, the people who write and compose and publish music of the Society, the music you play every night, wanted to do business in Nebraska and sell you the right to perform for profit, and suppose you wanted to purchase that, as a matter of fact, you would have to purchase music, wouldn't you? You wouldn't close your establishment because ASCAP went out of business in the State of Nebraska, would you?

Mr. Hotz: Object to that as having been gone over, and the question has about four or five independent parts.

The Court: Yes, I think the question is improper; it is compounded.

Mr. Frohlich: I will withdraw it.

[fol. 1436] Mr. Riddell: Furthermore, if the Court please, it is improper cross examination.

Q. If there were no ASCAP in Nebraska you wouldn't want to shut your doors, would you?

Mr. Hotz: I object to that as immaterial.

The Court: It is immaterial, but you may answer.

A. I wouldn't want to, no.

Q. You would want to negotiate for a license with people who compose, copyright and publish music which is now the repertoire of the ASCAP, wouldn't you?

Mr. Hotz: Objected to as having been gone over.

The Court: It is immaterial and fully covered. Objection sustained.

Q. Have you a list of the members of the Amusement Protective Association of Nebraska?

A. No, I haven't.

Mr. Hotz: It is available to the Secretary, but not to him.

Q. What dues are paid by these members to the Association?

A. No dues. It is just a civic association formed by us people that are interested in this fight against the ASCAP.

Q. Does this association have any bank account?

A. No.

Q. Does it have any funds at all?

A. No.

Q. Nobody supplied you with any money at all?

[fol. 1437] A. We had some money to get out this literature to our different people.

Q. How much did it cost you to get this literature out?

A. It cost quite a bit. We have sent out three hundred and fifty, probably four hundred, circular letters and cards and so forth.

Q. Did you send out more than this one in evidence?

A. Yes.

Q. A great many more?

A. We sent out two or three.

Q. Did you employ anybody to do any work in the field?

A. You mean traveling?

Q. Yes.

A. No.

Q. What did it cost you to get the circulars out?

A. Oh, I don't know now just what it cost me.

Q. Can't you give me an approximate figure?

A. Each time, forty-five or fifty dollars—each time we sent it out.

Q. Altogether, how much?

A. Two hundred and some odd dollars.

Q. Who supplied that?

A. Us men in the business.

Q. By contributions?

A. Yes.

Q. No dues?

A. No.

Q. Just contributions?

A. Contributions.

[fol. 1438] Q. Did you have a man named Paul Halpine

out doing work in the field for you in connection with the circular?

A. Mr. Halpine was probably of some help to us during the bill.

Q. Did he get any salary from anybody connected with your organization?

A. No.

Q. Does any other member of your family draw any money from this enterprise you operate?

Mr. Hotz: Objected to as not proper cross examination, and immaterial.

The Court: I think it is immaterial. Objection sustained.

Mr. Fröhlich: That is all.

Redirect examination.

By Mr. Hotz:

Q. This Exhibit Number 44 contains at the top a list of the officers and directors of the association concerning which you were talking, does it not?

A. Yes.

Q. Who is H. A. Marble, whose name is signed to it?

A. H. A. Marble is the secretary of the association.

Q. And lives in Omaha?

A. Yes, sir.

Q. Now, these men in this association were made up from Matt Kobalter of Lincoln, was he one?

A. Yes.

[fol. 1439] Q. Mr. Joseph Smith from Hastings?

A. Yes.

Q. And Bert Glover of Grand Island?

A. Yes.

Q. And William Barclay of Plattsmouth?

A. Yes, sir.

Q. George Sharpnack of Lincoln?

A. Yes.

Q. Roy F. Gordon of Bennington?

A. Yes.

Q. H. H. King of Norfolk?

A. Yes, sir.

Q. H. A. Marble of Omaha, and yourself?

A. Yes, sir.

Q. They constituted the Board of Directors, did they?

A. Yes, sir.

Q. Those men were all interested in the same line of business, generally, as yourself?

A. Yes, sir.

Q. I think you stated in response to a question by Mr. Frohlich about food and so forth, and drink out there, and I interrupted. You do not hold a hard liquor dealers license, do you?

A. No.

Q. You don't sell hard liquor on the premises of Peony Park, and never have?

A. No.

Q. Is there another association also in the State of Nebraska [fol. 1440] braska that has dance halls and taverns of that type? These taverns, are they separate from your beer taverns and so forth?

A. Yes, sir.

Q. Do they have an association?

A. Yes, sir.

Q. Of their own?

A. Yes, sir.

Q. You are not a beer tavern and your organization is not the beer tavern association people?

A. No.

Q. Did they cooperate with you in connection with this bill?

A. No.

Q. The men you have just spoken about, whose names I have just called out, they are all residents of the State of Nebraska, to your own personal knowledge, and reside here and operate a business interested in music?

A. Yes, they are.

Q. And were interested in this bill?

A. Yes.

Q. And are all members of this association?

A. Yes, they are.

Q. And all the members of the association are residents of the State of Nebraska?

A. They are.

Q. And carry on a business here?

A. Yes, sir.

Mr. Hotz: That is all.

[fol. 1441] Recross-examination.

By Mr. Frohlich:

Q. Don't you sell beer in Peony Park?

A. Yes, sir.

Q. Don't you also supply set-ups for hard liquor?

A. We sell beverages.

Q. You supply that to patrons?

A. We sell beverages.

Q. You furnish White Rock and gingerale for people, and ice to people?

A. Not ice no more.

Q. Do people come into your establishment with liquor, and drink it in your establishment?

A. That is possibly the case in some instances.

Mr. Frohlich: That is all.

Redirect examination.

By Mr. Hotz:

Q. They don't do that with your permission?

A. No.

The Court: That is so immaterial.

Mr. Hotz: That is all.

Mr. Frohlich: That is all.

Witness excused.

[fol. 1442] JOHN J. GILLIN, was called as a witness on behalf of the defendants, and after being duly sworn, testified as follows:

Direct examination.

By Mr. Hotz:

Q. State your name.

A. John J. Gillin.

Q. How old are you, Mr. Gillin?

A. Thirty-four, sir.

Q. Where do you reside?

A. I reside at 517 South 38th Avenue, Omaha, Nebraska.

Q. What is your business?

A. I am manager of radio station WOW.

Q. How long have you been identified with the radio business?

A. Since 1926.

Q. In what capacity at the beginning?

A. In 1926 when I finished an A. B. course at Creighton University I started working for the National Radio Advertising, Inc.

Q. Where?

A. In Chicago, as manager of their Chicago office.

Q. What were your duties?

A. My duties were to solicit advertising for national spot radio campaigns, to build program ideas and to sell those ideas to advertisers, as well as also build programs for the advertiser.

Q. Was that a comparatively new field at that time, that [fol. 1443] line of industry and business?

A. It was comparatively new from the standpoint of national spot business. There were only two national spot organizations in business—one was Scott Howe Bowen and the National Radio Advertising, Inc.

Q. What is national spot advertising?

A. National spot advertising is when an advertiser usually wants to test the radio out before he uses the network; he takes and places a program in certain spots which we commonly call "markets", like Omaha, St. Louis, Kansas City or Boston. He tests his program out in those markets, either by electrical transcription or live talent. If the program is successful he extends the campaign to other markets by electrical transcription or live talent, or purchases a network.

Q. How long after 1926 did you continue in that line of business?

A. Until 1929, when I returned to Omaha to take a course in law at Creighton University.

Q. Did you graduate from that course in law?

A. I graduated in 1931.

Q. During the time you were in law school did you still continue to be identified with the radio industry?

A. I wrote the continuity for Kozak, Inc., and also at the same time helped on the Blue Network, and called the

Maytag hour from Newton, Iowa; also announced at radio station WOW.

Q. And that continued until 1931?

[fol. 1444] A. At which time I was made program director, and in 1932 made general manager.

Q. That is what you are now?

A. Yes, sir.

Q. Have you had any musical education?

A. I had four years of piano, my last two years of grade school and the first two years of high school; and six years of vocal, my four years of high school and the first two years in college.

Q. What is a memory tune, and does that have any significance in the radio business?

A. Well, to me it has a lot of significance, because I believe any musical program of any significance on the air today has at least one memory tune. For instance, a very popular program is the Kraft Cheese program, called the "Kraft Music Hall", featuring Bing Crosby and other stars. His main spot in his program is built around a memory tune, a tune which recalls memories to people who hear it. In other words, a tune popular in 1922 and still is a leading tune on the air today and played quite often, like "Remember" or a tune of that type. That is what is commonly called a memory tune. If you have heard his program you hear him build up the memory tune by saying, "For instance, in 1922, Jack Johnson and Jess Willard fought for the world's championship, and Willard beat him at that time", or Schnozzle Durante is on Broadway with a new show, and the star motion picture at that time is so and so, and then he goes into his tune by saying, "Do you remember", and singing.

[fol. 1445] Q. That is called a memory tune?

A. Yes, sir.

Q. Are you a member of any association of broadcasters in the State of Nebraska, and if so, what?

A. I am a Director of the Nebraska Broadcasters Association, and past president of the same, and also past vice-president of the same.

Q. Do you hold any office in the national organization?

A. I was vice-president, first vice-president, of the National Association of Broadcasters, and I have been a member of its Board since 1934, for six years—the sixth year on the Board.

Q. Now, when this Bill No. 478, which is the subject matter of this lawsuit, was introduced, did you, as manager of WOW station, or of any of these organizations in reference to radio, in which you are interested, or an officer, did you have anything to do with the instigating of that bill or starting of it in the first instance?

A. No, sir.

Q. Or the drafting of it?

A. No, sir.

Q. Or did you ask anyone else to do it in your behalf?

A. No.

Q. When did you first learn about the bill, I mean in reference to what stage had it proceeded in the legislature?

A. It had been introduced in the legislature when I heard about the bill.

Q. Mr. Gillin, what are the principal sources of supply of music in the United States?

[fol. 1446] Mr. Frohlich: Just a moment. I object to that as this man hasn't qualified himself as an expert.

The Court: Objection sustained.

Q. Let me put it this way: What is the principal source of supply of music for radio stations within the United States?

Mr. Frohlich: I again object to that.

The Court: Overruled.

Q. I didn't mean that from a composers' standpoint, but from the user's standpoint.

A. The principal source of supply is ASCAP, and SESAC, the Society of European Stage Authors and Composers, Inc. SESAC, according to the survey which was made at the instigation of the Board of Directors of 1935 of the National Broadcasters had about fifty-five hundred copyrights. That survey was made by James Baldwin under our direction and under the direction of the committee which I headed.

Q. That is the Society of European Stage Authors and Composers, Inc., is that right?

A. Yes, sir.

Q. Not controlled by ASCAP?

A. No, sir.

Q. It is independent?

A. Yes, sir.

Q. Was that survey reduced to writing?

A. Yes, sir.

Q. And made available for the public?

A. Yes, sir.

[fol. 1447] Mr. Frohlich: Wait a minute. To which one are you referring?

Mr. Hotz: This one here, August 18, 1937.

Q. That was made available?

A. It was made available through the National Association of Broadcasters.

Q. Now, that is one source.

A. I would say another source is the music which is in the public domain.

Q. We know something about that, but so that there can't be any mistake about it, public domain means music that either has never been copyrighted or the music copyrighted and the copyrights having expired, is that right or not?

A. That is right.

Q. Under the copyright law, if you will pardon me, it is twenty-eight years and it may be renewed twenty-eight years under the law, so it would mean then that public domain would be such music as was no longer protected by copyright?

A. That is right, sir.

Q. Do you know anything about the extensiveness of that source of supply of music, and generally just what it consists in?

A. That source of supply is very extensive. However, in its present extensive form it is not usable for radio.

Q. Why?

A. Unless it is especially arranged by somebody to bring it up to date. For instance, take a tune like "A Tisket a Tasket" which was brought out and modernized, I would say, and placed on the radio by one of the ASCAP publishers, and because of the different orchestras playing it on the networks it became a very popular number.

Q. Is that a part of the business that the publisher members of ASCAP are engaged in, is that one of the things they do?

A. Oh, certainly.

Q. When they do that, they come under the protection of ASCAP, as you understand it?

A. That is right.

Q. Would you give us, if you could, the names of pieces that are in the public domain that would not come under any present modernizations used generally? I don't mean extensively, but a few pieces.

A. Well, I believe that there is a lot of music in the public domain that copyrights have not been renewed on. However, if an ASCAP publisher makes an arrangement of that particular tune and places it in the hands of certain orchestra leaders and they play it, why, that is known as an ASCAP tune under that arrangement.

Q. Has ASCAP ever furnished to WOW a catalog or list of the copyrighted and vocal and instrumental music which it claims to have?

A. No, it never has.

Q. Did you ever ask for it.

A. We have asked twice for it.

Q. What did they say?

A. I believe the first letter I wrote to ASCAP was in 1932, written to Mr. Greenberg and Mr. Greenberg answered and said their catalog was so voluminous and had a million [fol. 1449] and a half copies that they couldn't possibly send it.

Mr. Frohlich: The letter is the best evidence.

The Court: Overruled.

Q. And then again did you take it up with them?

A. I have asked for catalogs and I believe the other radio stations have asked for catalogs.

Q. Leave out the other radio stations unless referring to your personal knowledge of the Nebraska stations. Maybe that has been a matter of discussion in some of your state meetings, has it?

A. It has been, because we have never been able to get ASCAP's catalog, and we don't know what we are buying or paying for.

Q. Explain that to the Court; why is it?

Mr. Frohlich: I object to his explanation of why.

Mr. Hotz: Withdraw the question.

The Court: The question has been withdrawn.

Q. Has the matter of what you were buying from ASCAP, as you put it, been the subject matter of discussion with the state broadcasters in reference to the music that ASCAP

is alleged to own and control and claimed to own and control?

A. Yes, it has. There hasn't been a state meeting of the association but what there hasn't been a discussion of that particular group of publishers of ASCAP.

Q. What, if anything, have you tried to do about it?

A. Well, after this particular bill No. 478 was introduced [fol. 1450] in the legislature I thought the Nebraska broadcasters association should back the bill as far as the state is concerned, in the state.

Q. Now, from your personal observation, Mr. Gillin, and as the manager of WOW station in connection with what is known as popular music, present day popular music, about what percentage of that would you say was controlled by ASCAP?

Mr. Frohlich: I object to that as he is not a qualified witness.

Q. You keep the logs, don't you?

A. We keep the logs, but not program logs. The only thing I can see, I believe, from everything I have been able to understand in our discussions, is that eighty-five per cent—

Mr. Frohlich: I am making an objection to what he believes and thinks.

The Court: Objection sustained.

Q. Well, what is the basis for your knowledge, Mr. Gillin, of the number of copyrighted compositions of music, and vocal, that ASCAP has, what would be the basis for your knowledge of the percentage of the total of popular music as distinguished from standard music?

A. The basis that I would have would be a survey made with the National Broadcasting Company in which I think during a certain portion of the time it was established that eighty-five per cent of the music was ASCAP music.

Q. How was that survey conducted?

A. From the program logs of the National Broadcasting Company by their own program department under the supervision of John Royal, vice-president in charge of programs.

[fol. 1451] Q. Were you a member of that committee?

A. I was not a member of the committee that made the survey, no. I was a member of the committee trying to find

out how much ASCAP works were being used by the networks at that time.

Q. Would that percentage apply to your own station WOW?

A. I believe it certainly would, because we are a member of the basic Red Network of the National Broadcasting Company.

Q. Explain to the Court the difference between public and standard music.

Mr. Hotz: Withdraw that question.

Q. WOW is a member of the network that is known as the National Broadcasting Company network?

A. WOW is a member of the basic Red Network of the National Broadcasting Company, and has been a member of same since 1926, at the time the network was formed.

Q. Do you have a contract with them?

A. Yes, sir, we do.

Q. Which specifies your relationship?

A. Yes, sir, we do.

Q. Does that pertain largely to musical compositions that come in over a wire?

Mr. Frohlich: I object to that, if there is such a contract.

Mr. Hotz: We have got it.

The Court: It is just a preliminary question.

[fol. 1452] A. One of the very important clauses of that contract—

Mr. Frohlich: I object to that.

Mr. Hotz: I don't want that.

Q. Does it pertain to musical compositions and everything else that comes over the wire?

A. Yes, sir.

Q. And it specified the different rights and so forth?

A. Yes, sir.

Q. Now, are there any other stations in the State of Nebraska that are so hooked up with the national network?

A. We are the only National Broadcasting outlet in the state at the present moment.

Q. Now, who are identified with the Columbia System, which we all know is another similar network?

A. Radio KOIL, Omaha, and KFAB, Lincoln.

Q. What about the other stations in the state of Nebraska?

A. Those three stations, WOW, KFAB and KOIL, are the only network outlets in the state at the present moment.

Q. There are seven other stations in addition to the three you have mentioned?

A. There are seven other stations in Nebraska, and they are what we commonly call independent stations—that is the term set out in the Association of National Broadcasters, because they have no network affiliations.

Q. Those stations that originate their programs in their studios, in other words, the musicians and singers come right in there, and so far as the music is concerned, that originates in their studio, is that right?

A. That is right.

[fol. 1453] Q. Do you have any music locally that originates in your studio?

A. We do, yes, sir.

Q. How much in dollars and cents do you pay per annum for that music which originates in your studio?

A. Are you asking about musicians now?

Q. Yes.

Mr. Frohlich: That is paid to him?

Mr. Hotz: To the musicians.

A. This year we will pay some twenty-nine thousand dollars to musicians.

Q. For music that originates in your station?

A. Yes, sir, in our studio.

Q. About what percentage of the time, so far as music is concerned over your station of so-called radio time, does such activity take up, that is, the activity of the local musicians?

A. There are usually two quarter-hour programs a day from one orchestra of five pieces, which is called the "Sophisticated Ranger", and never more than two half-hour programs from the studio orchestra, which is a contract orchestra through agreement with the American Federation of Musicians, which don't play over an hour a day. They are required to rehearse two hours a day, and play one hour a day for that amount of money.

Q. Can you give us something as to the percentage of time that consumes, forty per cent, thirty-three and a third per cent, or forty-five per cent, or what?

[fol. 1454] A. You can't say each day. For instance, the ranger group is on at 6:45 in the morning, and at the present time 11:45 to 12:00, and an orchestra is on from, say, 11:30 to 12:00 midnight, or 11:00 to 12:30 A. M. For instance, yesterday you had Hitler's speech, and that particular program was out, but it never amounts to more than an hour and a half at the most over our station that the musicians play each day by live talent orchestra music; that is, at the present time.

Q. And KOIL also has local musicians that play right in the studio, play and sing music also?

A. Oh, yes. They have a contract also.

Q. Now, what amount of money did you pay to ASCAP last year, WOW?

A. Last year we paid to ASCAP twenty-two thousand eight hundred dollars.

Q. What is the basis for that amount or charge?

A. The basis for that charge has never been known. We believe it is a very arbitrary charge.

Mr. Frohlich: We object to that. The contract is in evidence.

The Court: The answer may be stricken out as not responsive.

Q. And by the basis of the charge, Mr. Gillin, I mean—

A. How was it arrived at by ASCAP?

Q. I don't mean that, but I want to know now how the twenty-two thousand eight hundred dollars came to be that amount; why not thirty-two thousand dollars, why not eighteen thousand dollars?

[fol. 1455] A. That represents fifteen hundred dollars as sustaining fee to the Society, that is, ASCAP, and five per cent of our gross revenue after fifteen per cent agency commissions for national advertising or local advertising agencies have been deducted. That five per cent represents five per cent of all programs, whether they are musical programs or not. That is including news broadcasts where no music is ever played, dramatic programs where no music is ever played.

Mr. Frohlich: I move to strike out the last part of the answer. The contract speaks for itself.

The Court: The motion is denied.

A. (Continuing) The dramatic programs where no music is ever played, and only excepts the five per cent on pro-

grams that are of a political nature and of a religious character.

The Court: I think that is all in evidence before.

Q. Is that contract satisfactory to you?

A. No, it is not satisfactory to us.

Mr. Frohlich: I object to that. The contract is in evidence. Whether it is satisfactory or not is immaterial.

The Court: It may not be very material, but the objection is overruled.

Q. You may answer.

A. The contract is not satisfactory to us, because we believe ASCAP sells their catalog on a very unfair basis.

Q. Why did you sign it?

[fol. 1456] A. We had no other recourse but to sign it.

Q. Why?

A. Because of the fact that we have a national statute, a copyright act, that says if we infringe on any music there is two hundred and fifty dollars damage fee, and we know we can't get along without ASCAP music, at least at the present time. We would infringe at some time along the line, and how many times, we wouldn't know, and we have got a contract with the National Broadcasting Company which specifies that we have got to have an ASCAP license or we can't get a program from them.

Mr. Frohlich: I object to that unless he produces the contract in evidence.

Mr. Hotz: Mr. Mills testified to that.

Mr. Frohlich: He didn't testify to any contract between the National Broadcasting Company and WOW.

The Court: It may stand.

Q. Calling your attention to defendants' Exhibit Number 45, which states that it is a National Broadcasting Company contract with WOW Life Insurance Association, Omaha, Nebraska, radio station WOW, dated December 2, 1936, and which is a photostatic copy, I will ask you if that is an exact copy of the original of that instrument?

A. It is, sir.

Mr. Hotz: You don't raise the objection, Mr. Frohlich, as I understand it, that it is a photostatic copy?

Mr. Frohlich: No, sir.

[fol. 1457] Q. You are operating under that now?

A. Yes, sir, we are operating under this contract.

Q. In that contract does it pertain to music?

A. Yes, sir.

Mr. Hotz: Offer in evidence defendants' Exhibit Number 45.

Mr. Frohlich: No objection.

Q. Now, Mr. Gillin, when you stated a moment ago that the contract was entered into between yourself and ASCAP, and which is in evidence here, was necessary because you had to have it, was it necessary also because the music that was controlled by ASCAP was necessary for the operation of your station from a practical standpoint of sellers of radio service or not.

Mr. Frohlich: Objected to as calling for a conclusion.

The Court: It does, but I think it may go in.

A. Because of two reasons—first of all we know we cannot get along without ASCAP music at the present time, and because our contract with the National Broadcasting Company specifically states we must have an ASCAP contract.

Q. Just explain that, why that is, as you understand it, with the National Broadcasting Company from a practical standpoint, without getting into the technical phases of it.

A. Well, the National Broadcasting Company, the network, does not clear at the source in regard to the ASCAP catalog.

Q. What does "clear at the source" mean?

[fol. 1458] A. If a program emanates from New York and includes music of the ASCAP catalog, that music is not cleared at the source or emanating point of the program. That is why we have to have a contract in Omaha to protect ourselves from any infringement suits that may be brought by this Society.

Q. In other words, the National Broadcasting Company under their contract with ASCAP, when that music comes out in Nebraska, they have made a settlement or deal with ASCAP, is that right?

A. We have to pay ASCAP five per cent of the receipts on any network that comes over our station.

Q. I think it was testified by Mr. Mills and others that the network pays nothing to ASCAP for their chain service, is that right?

A. For the network service they pay a sustaining fee for the three network stations that emanate, like our fifteen hundred dollars, but they don't pay any commercial fee on the program emanating and going out over the network stations affiliated with the network.

Q. That fee is collected from the stations throughout the nation, including WOW and the rest of the stations in Nebraska that make use of that network?

A. That is right.

Q. We will have somebody here to testify on KOIL of the Columbia System. Is that the same with them?

A. I can't testify what their contracts are with Columbia.

Q. What do you know about the practical operation of WOW station in Omaha, the mechanical parts? I want to know how the music comes in here and how it is broad-[fol. 1459] cast, just briefly, if you can describe that machinery and that equipment, and where it is located in Nebraska, and as much as you can of it. I am talking about the wire that comes in from New York, and what would come over that wire from New York if you did not have the broadcasting station in Nebraska, WOW; explain that.

A. The National Broadcasting Company leases a specially built wire for radio broadcasts from the A. T. & T. and then sends a program or talks or dramatic programs over that wire to the affiliated stations of the basic network.

Q. Confine it to WOW.

A. The basic network from New York or Hollywood arrives at the local Northwestern Bell Telephone Company and is then sent to our studio at 17th and Farnam.

Q. By what?

A. By a trunk wire leased by the National Broadcasting Company from A. T. & T., where it goes through our amplifying units in the studio and then goes to our transmitter by special wire we lease from the Northwestern Bell, where the program is impressed on our frequency motor.

Q. What did you call that?

A. Frequency.

Q. And impressed on what?

A. Frequency motor.

Q. What is the frequency motor?

A. It controls our frequency, and it is then sent out for consumption to the public. When a program is sent out it is still in radio frequency. And when it reaches your re-

[fol. 1460] ceiving set in your home its frequency is changed into the tones and music which you hear.

Q. If it were not for your station and machinery and equipment in the station in the City of Omaha, Nebraska, and that wire just came into the room, or into any other room, could anybody get any value out of it?

A. They would have to have a receiving set to get any value out of it.

Q. Now, WOW has the receiving set and transmitter in its Omaha establishment?

A. I mean by that if the line came into a hotel room, for instance, if we were going to have a program from NBC and send it over special leased wire to the court room in Lincoln to have the Court hear that program, if they had a loud speaker here they could hear that program, if they were listening to it off the line, but if they had no loud speaker here, they couldn't hear it. You can attach it to this post, but you have got to have the loud speaker to get the program.

Q. Do you know the number of radios there are in the State of Nebraska installed in homes and elsewhere in the state?

A. No, I couldn't give you that figure.

Q. You don't know that?

A. Not the exact figure, no.

Q. Do you know near enough so as not to be too distant, approximately?

A. I don't want to make a guess.

Q. Where would that information be available?

[fol. 1461] A. We have the information in our files, but I don't remember the figure.

Q. You could get that for us, couldn't you?

A. Yes, in ten minutes by telephone.

Q. You will do that before you conclude here?

A. Yes.

Q. When this music comes out from New York over this wire that you have just spoken of into your studio for the purpose of being rebroadcast to the public, are you able to control the numbers that are played?

A. We never know what numbers are going to be included in a program. We very seldom hear of it, unless it is a special program. We don't know who will be the guest artist or what he will sing or what orchestra will

play. We have no control over the program that emanates from NBC.

Q. That is where ASCAP enters into that situation, is that right, and why it becomes necessary for you to have a contract with ASCAP?

A. Well, the National Broadcasting Company makes us sign a contract that includes a clause which says we must have an ASCAP license, and that is why we have one. As far as the National Broadcasting Company is concerned. On our local program we would still have to have a license.

Q. That is specified in defendants' Exhibit Number 45?

A. That is not specifically shown in Exhibit 45, but it was in our contract of 1932, and changed in this contract, but it means ASCAP, because the National Broadcasting Company clears at the source, and all other performing right societies—

[fol. 1462] Mr. Frohlich: Why not read that section?

A. (Continuing) This section says, "You agree to maintain for your station such licenses, including performing right licenses, as now are, or hereafter may be, necessary for your station to broadcast the programs which we furnish to you hereafter".

Q. There is music, of course, that comes out over this wire from New York that is not ASCAP music?

A. Oh, yes, there is music being broadcast by network that is not ASCAP music.

Q. In connection with that music you are not required to pay any attention to public performance rights and methods of infringement, isn't that right?

A. We never have.

Q. Why is that, again?

A. Well, because of the fact that ASCAP's license is supposed to protect us.

Q. I mean these other programs of music that is not ASCAP music, why do you not have to pay any attention to those?

A. Because they are cleared at the source, NBC headquarters, New York, Chicago or Hollywood.

Q. That is not true with ASCAP?

A. That is not true with ASCAP.

Q. By clearing at the source you mean they have made arrangements with the users of the music?

Mr. Frohlich: I object to that as calling for a conclusion, and not a single fact in evidence to show that.

[fol. 1463] The Court: You might say, "What do you mean by clearing at the source?"

Q. Answer that; what do you mean by "clearing at the source"?

A. By clearing at the source I mean that any liability would be taken care of at the source, and payment of any sum of money for the right to broadcast that particular music would be paid at the source at which it emanates.

Q. You are talking about infringement of copyrights?

A. Specifically.

Q. And you are talking about copyright fees?

A. Yes.

Q. And public performance rights and everything else?

A. That is right.

Q. I want to get at the negotiations leading up to this contract that is in evidence here now with ASCAP, between ASCAP and WOW. How were the terms and conditions of that contract arrived at as between your organization and ASCAP?

A. ASCAP sent us the contract and asked us to sign the contract through their Omaha office, which is Mr. Blazer. We held it up because we received a wire in 1932 from Mr. Loucks; he negotiated with Mr. Mills or Mr. Paine for extension of the contract, I believe, to September 1st, until the time that the negotiations would be settled, and we received a wire in the early part of January from ASCAP and it said specifically if we didn't sign the contract before January 15th, that was the deadline, we would then give ASCAP a cause of action for infringement suits against the station.

[fol. 1464] Q. Was the contract in satisfactory form for WOW at that time or not, when you signed it?

A. Not to us.

Q. Why not?

A. There were no discussions about the contract so far as the station was concerned at all. It was just sent to us and they said, "Here is your contract; sign it or else."

Q. What were the objectionable features?

A. The objectionable features are that you are paying five per cent on everything that goes out over our facilities of a commercial nature, whether news, dramatic programs

or what it is, and we have always tried since 1932 as an industry to ask ASCAP to give us a contract on a per program basis. In other words, for the amount of music that ASCAP controls, and that we use, if we use ASCAP music on that program. In other words, if the program includes ASCAP music, we will pay for it the same contract as the newspapers have today. If it doesn't include ASCAP music, we don't want to pay for it, because we are either paying for public domain music or somebody else's music then and ASCAP is still getting the money for it.

Q. That is the condition that exists today as far as your WOW station is concerned, and no doubt other stations in the State of Nebraska?

A. That is right.

Q. So that if I understand it, in conclusion of your testimony, WOW's contract with ASCAP today is not the result of trading and negotiating which resulted in a satisfactory [fol. 1465] factory contract to your organization?

Mr. Frohlich: I object to that.

A. No.

The Court: Objection sustained, and the answer stricken.

Q. Some mention was made of a Lang-Worth catalog here in the direct examination on the other side. What is the Lang-Worth catalog?

A. The Lang-Worth catalog is the old N. A. B. bureau of copyrights of some twenty hours of music and eighty hours of music out of the original one hundred hours of music. Mr. Langloise and Mr. Wentworth who own the catalog now, were able to get together from the public domain and other particular sources of music that does not carry any copyright fees. Once you purchase the Lang-Worth catalog it is free from any copyright fees, but it is only one hundred hours of music, and a radio station cannot just use one hundred hours; it is not sufficient to carry the bulk of its program.

Q. Mr. Mills made the statement, and I think Mr. Buck did the same, that WOW or one of these stations here in the State of Nebraska, if it wanted to, it could run and operate without ASCAP music. Is that true from your viewpoint or not?

Mr. Frohlich: I object to that as characterizing another witness' testimony.

Mr. Hotz: Well, he said that.

The Court: Overruled.

[fol. 1466] A. WOW could not run without an ASCAP contract. We are willing to pay ASCAP for the music we use.

Q. I think you testified you never had furnished to you a catalog showing the ASCAP music, and that you had asked for it.

A. Yes, sir.

Q. And they never furnished it?

A. No, sir.

Q. I will call your attention to this book I have had the court reporter mark Exhibit Number 46, and will ask you to state if that is the catalog of the SESAC Society of European composers you spoke about having some fifty-five hundred pieces of music in it.

A. Fifty-five hundred. That is the N. A. B. report, sir—a special edition sent out.

Q. About how many pieces of music are there in the Lang-Worth catalog?

A. I wouldn't be able to specifically state how many numbers are in there, but there are one hundred hours of music available to broadcasters at the present time, of which no copyright fees are attached.

Mr. Hotz: Offer in evidence defendants' Exhibit Number 46.

Mr. Frohlich: No objection.

Q. That is not a catalog but is a survey by the National Association of Broadcasters, this Exhibit Number 46, but it does contain the names and the pieces of music in SESAC?

A. It contains the names and pieces of music as of that date.

[fol. 1467] Q. Of date August 18, 1937?

A. Yes, sir.

Q. Where does most of the music that is in Exhibit Number 46 originate—where did it originate?

A. Most of the music in that catalog originates in Europe of certain publishing houses that have not received a license from ASCAP, and have made no overtures to ASCAP to receive a license from ASCAP.

Q. It is mostly foreign music?

A. Foreign music.

Q. Most of it is foreign music?

A. Most of it.

Q. Is it of any great commercial value?

A. No, it is not of any great commercial value. The SESAC library's only commercial value at the present time comes from the hill-billy tunes in it, like M. M. Cole and so forth which SESAC picked up.

Q. Do you know who the association music publishers are? That was referred to by Mr. Mills as having music for your station?

A. Yes.

Q. Who are they and what did they put out?

A. The Association Music Publishers, if I am right, now has—I am trying to think of two organizations; one of them gives you the right to play certain music and transcribe certain music, and the other one has a library, and I can't differentiate between the two, which is the exact name of the two.

Q. The Associated Music Publishers is the library?

[fol. 1468] A. The Associated Music Publishers have a library of music that they sell to radio stations, like Lang-Worth and so forth.

Q. Is that a recorded library for records?

A. It is a transcription library of very fine music.

Q. Does it license the performance rights, or don't you know that?

A. We do not have the Associated Music Publishers library service, but I don't think there is any difference to the Source or the World whereby if you have a commercial program you have to pay five per cent of that particular program, that is, sale of time.

Q. Does it amount to any considerable amount of music?

A. It is a nice library, but not the library the Source or World is. It is fine music, but not as extensive as the Source or World. In other words, the Source has about three thousand numbers in it today, and I don't think the Associated has half that many.

Q. Would those combined with others that you speak of, be sufficient to run and operate your station?

A. I say we can't get along without ASCAP, unless public domain music is arranged by broadcasters in suitable form for playing over the air, to be able to say, "Here, we

have got enough music", and that is very, very hard to say because you never know when you are going to infringe upon an ASCAP publisher. I know at the present time if we took a fifteen minute program each day and put in it [fol. 1469] nothing but SESAC hill-billy tunes, and another fifteen minutes with Lang-Worth, all right, that is a half an hour of these that we could run on the average from day to day of copyrighted free music.

Q. Add to that this Associated Music Publishers and the World.

A. Those are transcription services on which we still have to pay five per cent on the receipts. If we have a program with Lang-Worth, which is copyrighted free music, in the morning at 6:45 A. M., and your client decides to take Lang-Worth because it is cheaper than the Source, still you have to pay five per cent of the receipts to ASCAP, and it is not ASCAP's music.

Q. Mr. Gillin, another question: When this bill was pending in the legislature, after it was introduced, did the National Broadcasters or the association as such have anything to do with it at all?

A. No, the National Broadcasters had nothing to do with it.

Mr. Hotz: That is all.

Cross-examination.

By Mr. Frohlich:

Q. What is the call letter of your station?

A. WOW.

Q. What is the corporate operating station?

A. Woodmen of the World Life Insurance Association.

Q. How long have you operated that station?

A. Since 1923, April 8th.

Q. How long have you been connected with them?

[fol. 1470] A. Since 1930.

Q. During all this period since 1930 were you also personally a member or connected in any shape, manner or form with the National Association of Broadcasters?

A. I went to the first meeting in 1932 and was elected to the Board in 1934.

Q. So that in 1932 you attended the first meeting of the National Association of Broadcasters?

A. Right.

Q. You knew the National Association of Broadcasters was in negotiation at that time with ASCAP, didn't you know that of your own knowledge?

A. I say there were discussions in the matter.

Q. There were discussions at that time, were there?

A. Yes, sir.

Q. These discussions were going on between the National Association on behalf of all the broadcasters who were members of that body, isn't that right?

A. Until a certain point in which you didn't recognize them any more, and sent out your contracts.

Q. Will you please answer my question? Weren't these discussions going on by the National Association of Broadcasters on behalf of its members? Yes or no.

A. Yes, they were.

Q. And wasn't WOW and the Woodmen of the World Life Insurance Association at that time in 1932 a member of the National Association of Broadcasters?

A. Yes, sir.

[fol. 1471] Q. Did you, yourself, participate in any of these negotiations or discussions with the Society in 1932?

A. No, sir.

Q. Did a time come later when you did participate in discussions on behalf of the National Association of Broadcasters with the American Society?

A. No, but there was a time when I sat on the Board on which all negotiations or discussions were taken up with the Board and a special committee, of which I was a member—the executive committee.

Q. You knew way back in 1934 and 1932 and all those years that there had been a discussion between the National Association of Broadcasters and the American Society with respect to a per piece system, a broadcast system and a blanket license system, you knew that, didn't you?

A. I already testified to that; yes, sir.

Q. There was a lot of discussion going back and forth all those years, and the broadcasters brought out the suggestion of the per piece system, that they would like the per piece system?

A. We made a demand for the per piece system and the per program system, and were never able to get it.

Q. You got the blanket license system?

A. Yes, sir, but it covers everything on our program schedule; we pay for everything.

Q. Let us take the program system. Wasn't there a discussion between your association and the American Society which went into the practical operation of such a system; [fol. 1472] were you present at any of those discussions?

A. On the per piece system?

Q. On the program system.

A. I have been at all those negotiations as far as the Board is concerned. The committee reported back to the Board, and the Board took it up and discussed it at great length, yes.

Q. If the program system were operated, how do the broadcasters want it to be operated, in what manner?

A. We want to pay the same as any other newspaper station today, on the music used on the air. That is, if we have dramatic program, for instance, and there is no ASCAP music on that program, we don't want to pay you for the music we use. If it is a news program, and you have no copyright on news, we don't want to pay you for that program.

Q. Didn't your association sit in on discussions with respect to newspaper contract that was formulated in 1932?

A. I don't think they sat in directly. I think certain members of the National Association of Broadcasters went out and made their own deal, like the networks did in 1932 with you gentlemen.

Q. As a matter of fact, didn't the National Association of Broadcasters approve of a newspaper form of contract?

A. Later they did, yes, because of the fact they wanted to hold all portions of the industry together.

Q. In 1932 the situation was more or less experimental in your industry, wasn't it?

A. We had had a contract, I think WOW, for a number [fol. 1473] of years with ASCAP, and every other station did too.

Q. It was a young industry and had not been in business long prior to 1932, WOW?

A. I had had discussions with ASCAP over the payment in 1926 of fees on the Maytag program.

Q. The plan with respect to the newspapers hadn't been worked out prior to 1932?

A. No, sir, not to my knowledge.

Q. That was worked out in 1932 with the knowledge and approval of the National Association?

A. The contract was made first and later approved to

hold everybody in the industry so that there would be no breaking up of the industry, of the National Association of Broadcasters.

Q. So that at that time in the year 1932, or shortly thereafter, the National Association approved of this newspaper contract and felt that it was fair and just?

A. They had to do it or the newspapers would have formed their own organization.

Q. They really approved of the contract, didn't they?

A. Yes; they had to.

Q. It was approved by the association?

A. Under everybody's protest.

Q. Now, the National Association sat in with the Society with respect to the commercial contract between the Society and the various broadcasters throughout the country, isn't that right?

A. There has been a committee appointed every time a contract has come up, but were never able to get a satisfactory agreement.

Q. Wasn't there a committee representing the National Association of Broadcasters in a discussion and negotiation with ASCAP in 1932?

A. Yes, there was until Mr. Levy and the networks went out and made a deal with you gentlemen, and we had to take it or else.

Q. Didn't that committee represent the entire association and each member of the National Association?

A. That is right, and Mr. Levy—there should be a full explanation.

Q. I didn't ask you for a full explanation. I simply want the facts. After the National Association had approved of the commercial contract, your station was notified that there had been an agreement between the American Society and the various broadcasting stations, isn't that right?

A. No. The networks made their contract, and the gentlemen that were running the National Association then from the executive standpoint in Washington wired us, and they wired every other station. The networks made a deal with ASCAP and they were leaving it up to us, and the demand came from your office to either sign on January 15th or there would be infringement suits.

Q. Were you ever notified by any person on behalf of the National Association away back in 1932 that an agreement had been made between ASCAP and the association?

A. No. The only agreement that was made was the letter that was sent out by Mr. Loucks stating he had an agree-[fol. 1475] ment with Mr. Mills extending the contract under its present basis from September 1st until negotiations or discussions were arrived at a satisfactory point. That is the only thing we received.

Q. Subsequently your station signed an agreement with ASCAP?

A. We signed it before January 15th.

Q. January 15, 1933?

A. January 1, 1933—between January 1st and January 15th, sometime in between that time.

Q. So far as you know, the other members of the National Association signed a similar agreement?

A. They had no recourse but to sign.

Q. They signed it, didn't they?

A. Sure.

Q. The agreement was perfectly satisfactory at that time to the National Association, wasn't it?

A. No.

Q. Did the National Association advise you not to sign any such agreement?

A. They said if you do not sign it, you are doing it at your own risk.

Q. Now, Mr. Gillin, I understood you to testify that last year you paid to the American Society approximately twenty-two thousand dollars?

A. Twenty-two thousand eight hundred dollars.

Q. Of which fifteen hundred dollars was a sustaining fee?

A. Right.

Q. And the balance of about twenty-one thousand dollars [fol. 1476] was five per cent of the time on the air you sold?

A. That is right.

Q. What did your station take in in gross receipts in 1938? These figures you have given us represent 1938?

A. Yes, 1938—twenty-two thousand eight hundred dollars. I have it here. Do you mind if I read it to you? \$472,451.21.

Q. That is the amount your station took in in cash from advertisers for the sale of time on the air during the entire year 1938, isn't that right?

A. That is the gross amount of money taken in for time, for talent and for everything that we did.

Q. For the sale of time on the air, is that right?

A. This is our gross receipts and it includes talent fees. If we sell a singer to somebody, it includes that service. We may send out a troupe of actors out to Nebraska, and it includes that.

Q. I didn't ask you for those figures.

A. It includes a lot of things.

Q. Are you able now to give this Court the amount of money that your station took in in 1938 for the sale of time on the air?

A. No, I can't give the exact amount, but I can give them the gross receipts for time and every other function of the station; that is all I can do. I think you will find that this particular amount here, if you will deduct your fifteen hundred dollars sustaining fee which we pay you, and then take—

[fol. 1477] Q. (Interrupting:) Let us do that.

A. Well, the whole thing, after you get your fifteen per cent off, and deduct talent and commercial programs of political and religious character and get down to that, and all expenses, it would not be within the scope of the five per cent tax levied on the station. You have got your five per cent, and that five per cent is right.

Q. What did you pay to the advertising agency during 1938?

A. I can't give you that figure—it is fifteen per cent.

Q. Of what?

A. Of the gross sale of time on the air—only time; no talent.

Q. Don't you know that figure?

A. You mean the figure in time?

Q. The time on the air.

A. I know the gross figure. I will tell you why I don't know that, because I am manager of the station and our particular station is merely a department of the Woodmen of the World Life Insurance Association. Whatever the sale of time of the station is, I never look at it because it goes to the auditing department of the Woodmen of the World Life Insurance Association. At the end of the month I get what the station made net, and I also get at the end of the year what the station grossed. That is all I get and that is all I am supposed to know. Mr. Bradshaw, president, or Mr. Patterson, or Mr. Shepherd can tell you exactly what our time sales were, but I can't.

Q. You as general manager negotiate for the deals where [fol. 1478] the advertisers do business with you?

A. Right, but I don't know how much money the corporation made or the time sales grossed.

Q. What did you receive from the National Broadcasting Company for the hook-up?

A. That is all included in this figure.

Q. In what figure?

A. In the four hundred thousand dollar figure.

Q. Just give us that figure again, please.

A. \$472,451.21.

Mr. Hotz: And the amount you paid ASCAP was \$21,800?

The Witness: Twenty-two thousand, eight hundred paid to ASCAP in 1938.

Mr. Hotz: Multiply that by twenty.

The Court: Multiply by twenty and you will have the total.

Q. Now, you testified you don't keep logs of the particular musical compositions you play, is that right?

A. We are keeping logs of the program in which we are playing only copyrighted music to find out how much we can play if we had to, but not keeping logs on the amount of ASCAP music because we don't know what their catalog is.

Q. Do you play any transcription records at all?

A. Yes.

Q. You know that the Federal Trade Commission recently propounded a rule that all of you stations should file with it a complete log of each and every musical composition played [fol. 1479] in that manner?

A. They just retracted that rule last week.

Q. You know the chief objector to that rule was the National Association?

A. Why, naturally, it would take four more auditors to work in the station, in every station in the United States.

Q. These four auditors would be required to keep track of the records played by transcription?

A. Required to take part—every program and selection and so forth was wanted on the log.

Q. In other words, you would have to increase your clerical staff in order to keep track of this rule of the Federal Trade Commission with respect to the transcription records only, is that right?

A. Sure, you would have to increase it.

Q. By how many employees would you have to increase your staff?

A. I don't know. We have seventy-two now, and I don't know how many it would be increased to.

Q. How many hours of transcription do you have a day?

A. Well, we have forty-five minutes—about an hour and five minutes a day of transcriptions.

Q. A little over an hour?

A. Yes.

Q. About how many hours do you broadcast?

A. Nineteen and a quarter hours a day.

Q. About eighteen hours of general broadcasting, and one hour of transcription records?

A. That is right.

[fol. 1480] Q. Suppose you had to keep a record of each and every musical composition that came into your studio, transferred or broadcast by your studio, for the eighteen hours a day, would there be a necessity for additional employees?

A. Certainly, but we would be willing to do that.

Q. Please don't volunteer.

A. I think I ought to explain why we would be willing to do it.

Q. Please, I don't want it.

A. Neither do I, but I will give you the full picture of it.

Q. We will get the full picture of it. If you were running a program system you would have to report either to ASCAP or to any individual owner of copyrights or any other society what programs contained their music, wouldn't you?

A. That is right.

Q. In order to do that, you would have to keep a fairly accurate log of each and every program emanating from your studio?

A. Right. We would pay only for what music we could use.

Q. You would have a record of each and every composition on the program?

A. Certain stations do that in the United States, because they save money.

Q. Wouldn't it entail a tremendous expense to you?

A. Not when we pay you for something else.

Q. Wouldn't keeping track of the musical compositions and programs in detail for the purpose of reporting prop-

[fol. 1481] erly, entail very substantial increase in your operations?

A. Yes, but it would be less in the long run, because we wouldn't have to pay on all programs of a commercial nature.

Q. Wasn't it pointed out in the negotiations in 1932 by Mr. Mills and Mr. Paine to the broadcasters that the operation of the program system would be tremendously expensive to the broadcasters? Wasn't that shown to them?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No. We have asked for it since 1932, and we are still asking for it in the present discussions.

Q. If you were operating on the program system you would have to report to the owners of the copyrights with respect to each and every composition played on each and every program, wouldn't you?

A. I believe that could be worked out differently.

Q. Wouldn't you have to report it?

A. We could buy a catalog, whether it was Schirmer or Berlin and so forth, and we would buy it for a certain price. If the price was too great we would go over to Jesse Lasky, or Metro-Goldwyn-Mayer and say, "We would like to buy your catalog."

Q. I didn't ask you what you would buy. I want to know as a business proposition in the practical operation of your studio whether, if you were operating on a program system under which you were paying the owners of the copyrights of musical compositions, you wouldn't have to keep accurate records of each and every program and report that to the respective owners?

[fol. 1482] A. That is right. About eight hours a day of our particular program schedule now, Mr. Frohlich, is N. B. C. commercial programs of a dramatic nature, four hours a day of music from N. B. C. cleared at the source. There would be only about three hours a day you would have to keep tab on. What do I have a program director and two assistants and a production manager for?

Q. If the music from N. B. C. is not cleared at the source, and came into the studio, wouldn't you likewise have to report that music to the copyright owners?

A. Certainly, we would.

Q. Wouldn't that entail substantial expense to your organization?

A. Yes, but I believe it would be a saving of expense under what we are paying now.

Q. You mean you wouldn't have to hire additional people?

A. I say some.

Q. You would have to pay salaries?

A. But not as heavily.

Q. You would have to pay these people salaries?

A. Yes, certainly. We have a contract department and a program department that is pretty competent.

Q. When you furnished these statements to the owners of the copyrights after you had made your program inspection and had broken down each and every program, wouldn't you expect that they would have the right to check up the accuracy of your reports?

A. Certainly, sure.

Q. If on a program system, you would expect that the [fol. 1483] owners of these copyrights would want to check up to see if you were giving accurate reports?

A. We would want them to.

Q. It would entail expense on their part?

A. Yes, sir.

Q. Wouldn't it be the natural and practical thing in your business, inasmuch as you have got to take the music from them, that they would pass that expense onto you? Isn't that the picture of the proposition, they would pass that onto you?

A. Certainly.

Q. Taking that into consideration with other expense you would have, wouldn't that increase the cost of your operations considerably?

A. But it would decrease the amount of money we are paying because we wouldn't pay them for news broadcasts, which means a substantial amount of money, or dramatic programs eight hours a day.

Q. You are making the assumption that you would continue to pay five per cent on such programs, aren't you?

A. No; I never said that. In all our discussions, nothing has been reached as yet, because you gentlemen will not discuss it with the National Association. You haven't said any figure, except you must pay more.

Q. Did we ever tell you you would have to pay more?

A. Yes.

Q. When?

A. I was told—

Q. Who, on behalf of the American Society, told you you [fol. 1484] would have to pay more?

A. The ASCAP—I beg your pardon, the ASCAP did not, but Ed Klauber did.

Q. Is he an official of the Columbia System?

A. Right.

Q. Did anybody on behalf of ASCAP tell you in words and substance you would have to pay more?

A. No, but Mr. Klauber has been discussing the thing with you and reported back to the Directors of the N. A. B.

Mr. Frohlich: I move to strike that out.

The Court: It seems to be about as pertinent as the rest of it. It may stand.

Q. Now, as I understood it, you were unable to tell whether or not you were infringing on the music owned by ASCAP members or not?

A. No, because we have never received their catalog.

Q. Your orchestra brings into the studio musical compositions from which they perform, don't they?

A. That is right.

Q. And at the foot of each musical composition, on the first page, you have noticed the copyright notice, haven't you?

A. Yes.

Q. And you have seen the name of the publisher or the owner of the copyright?

A. We play a little non-copyrighted music, too.

Q. You know the name of the publisher and the copyright proprietor?

A. I know, but why should we go into that because we [fol. 1485] have got a contract now with ASCAP.

Q. I am not asking that. I say, you know that is shown on each musical composition?

A. Yes, sir.

Q. All you have to do is look at the foot of the page at the notice and see whether the name on that notice is included in the membership list of ASCAP?

A. On a lot of transcriptions we play we don't know whether we are infringing or not.

Q. In those transcriptions do you play some copyrighted musical compositions?

A. We don't know. They come from N. B. C.

Q. Don't they come into your studio?

A. Yes.

Q. If you were trying to avoid infringement, couldn't you examine the music?

A. Certainly.

Q. You would find that there, wouldn't you?

A. What?

Q. You would find the name of the owner of the copyright.

A. On the transcription? Not on the transcription.

Q. There is nothing on the transcription?

A. Nothing on the transcription says it is copyrighted by the owner, author and composer.

Q. Well, couldn't you obtain from the person supplying the transcription the name of the owners of the copyright, couldn't you get that from them?

A. I imagine we could.

[fol. 1486] Q. In other words, the transcriptions are not published, are they?

A. No. We buy them from N. B. C. for a hundred and seventy-five dollars a week.

Q. You don't know how they get them?

A. We know they transcribe them themselves and sell them to us.

Q. N. B. C. has been trying for a long time to build up a library of copies not owned by members of the Society?

A. Most of the music they have transcribed is ASCAP music, that we have in our library.

Q. Do you mean to tell me that N. B. C. takes ASCAP music and makes a copy of it?

A. No copies of it, but they are in the form of transcriptions, and they charge us a hundred and seventy-five dollars a week for the use of those transcriptions.

Q. Are they printed?

A. Phonograph records.

Q. You are speaking of transcription records now?

A. That is right.

Q. When you pay that hundred and seventy-five dollars, it doesn't indicate how much or how little of those records you use?

A. No.

Q. You can dip into all the records and use as much or as little as you please?

A. That is right, but we only play what we think we should play.

[fol. 1487] Q. In other words, you are paying N. B. C. for the records a blanket license, aren't you?

A. That is right. We are not paying a blanket license on those records, no. We don't own those records. We pay a hundred and seventy-five dollars a week for the use of those records, but they own them. It doesn't include any copyright fee. We still have to pay you five per cent on top of that.

Q. Do any network programs originate in your station?

A. Not at the present time. We used to emanate three per week on the basic Red Network.

Q. Under your contract at the present time with the National Broadcasting Company, these network programs originate outside of the State of Nebraska, don't they?

A. Right.

Q. And they come into the state as you have described, by telephone wires?

A. Yes.

(Whereupon an adjournment was taken until 1:30 o'clock P. M.)

[fol. 1488] (Pursuant to adjournment, Mr. John J. Gillin resumed the stand and testified further as follows:)

By Mr. Frohlich:

Q. Now, Mr. Gillin, did I understand your testimony this morning to state that your station had a license with SESAC at this time?

A. Yes, sir.

Q. Now, what year did it first obtain a license from SESAC?

A. I don't remember the exact year. It certainly isn't as long as ASCAP.

Q. Could you give us the approximate period or date of year?

A. It was about the time when they took over the copyrights of the Cole Publishing Company, and the reason they bought it was because they needed some hill-billy numbers.

Q. When would you say that happened?

A. Well, I don't know when they took it over.

Q. Prior to your taking a license from SESAC had you played in your station or performed any of the numbers that are covered by SESAC catalog?

A. Not to my knowledge, but we may have through the National Broadcasting network service, but not locally, I don't believe.

Q. Of course, if you played any of those through the National network service, you were infringing on the SESAC music?

A. No, because the N. B. C. clears at the source.

Q. Under their arrangement with SESAC they alone are liable for any infringements over any stations on which they hook up that particular program?

[fol. 1489] A. That is right. In other words, they cleared at the source.

Q. In other words, you were perfectly free then?

A. Yes, sir.

Q. I show you this defendants' Exhibit Number 46, and direct your attention to the number 758 under the word SESAC on the front page. Can you tell us what that signifies?

A. No, I can't.

Q. Did you know that SESAC made a claim against the National Association of Broadcasters, and that it was going to bring suit for publishing this volume or book, defendant's Exhibit Number 46?

A. I think they made a claim, but they never sued N. A. B. on it.

Q. Did you know the claim was based on the fact that this book did not contain all the compositions which SESAC claims it owns or controls?

A. They may have claimed it, but they didn't bring suit, Mr. Frohlich.

Q. How did you get in possession of this document?

A. It isn't my document.

Q. Who furnished that to you?

A. The defendants' attorneys.

Q. You mean Mr. Hotz?

A. Mr. Hotz had the document. I believe we have got the same document at the station, but I didn't bring it down.

Q. Are you sure that you have that document?

A. I think we have.

[fol. 1490] Q. Was this circulated publicly, do you know?

A. I think it was circulated to those stations that desired it, just like any other publication.

Q. Was it circulated to members of the National Association of Broadcasters?

A. Mr. Frohlich, any publication of the N. A. B. report comes out once a week, that is the official organ and publication of the National Association of Broadcasters, the N. A. B. Reports. Now, the N. A. B. Reports go out to every member of the National Association of Broadcasters.

Q. You know this defendants' Exhibit Number 46 contains a facsimile of the contracts which are entered into between the broadcasting stations, including all of the network stations and SESAC, you know that, don't you?

A. A facsimile of all the contracts?

Q. A facsimile of their form of contract.

A. I have never looked over that. I didn't know that.

Q. Will you look at this document that is part of Exhibit number 46 designated Exhibit 1?

A. Yes, sir.

Q. Is that document a facsimile of your contract with SESAC?

A. I would have to read it over very thoroughly and get our contract at the station with SESAC and compare it very thoroughly before I would say it does.

Q. Is your contract available?

A. It is at the station and I can get it for you.

Q. I wish you would. Did you ever read this sentence on the first page of this report of defendants' Exhibit Number [fol. 1491] 46: "Because of the equivocal terms and phrases contained in the SESAC's license agreements (copies of which are marked Exhibits 1 and 2 are attached to and made a part of this report), we were unable to determine from that instrument specifically what the SESAC had to offer"; did you ever read that?

A. I don't remember reading it, no.

Q. Do you know that in this document, Exhibit 1, being the form of contract which is mentioned in the sentence I just read to you, there is this clause—

A. I have never read that contract.

Q. No. 7 in the contract—

The Court: If he hasn't read it, he wouldn't know what the clause is.

Mr. Frohlich: Well, we can get that from his contract.

Q. Your station has fixed rates which it charges to advertisers for its service and facilities?

A. Yes, sir.

Q. Now, those rates vary from time to time, don't they?

A. Yes, sir, it varies at the particular hour of the day. In other words, from 6:30 to 8:30 A. M., and 8:30 A. M. to 6:00 P. M. there is a certain rate, and from 6:00 P. M. to 11:00 P. M. there is a certain rate, and then the early morning rate goes back into effect.

Q. Have you ever seen this magazine, "Radio Advertising"?

A. Yes.

Q. Is that an accurate and truthful survey of the rates of [fol. 1492] the various broadcasters?

A. I believe it shows what the broadcasters charge for their time at the present time. If that is the September issue, it would be accurate so far as I know.

Q. And in the September, 1939 issue, which I am going to show you, did you supply the information to the magazine with reference to your rates?

A. Certainly.

Q. Now, I call your attention to page 143 of this magazine, and ask you whether that accurately represents the various rates of your station WOW?

A. Yes, sir, it does.

Mr. Frohlich: I would like to offer in evidence plaintiffs' Exhibit Number 47, this one page.

Mr. Hotz: Objected to as not proper cross examination.

The Court: Overruled.

Q. Are you familiar with the other rates charged by the broadcasters in Nebraska?

A. No. I have got our story to tell, and that is enough.

Q. You have no idea of the accuracy of the rates of the other stations?

A. No.

Q. Now, on this Exhibit Number 47 there is this statement: "Week days, 6:00 P. M. to 11:00 P. M., one hour, \$320.00." That is correct, isn't it?

A. That is correct.

[fol. 1493] Q. That is the rate to the advertisers for use of one hour of station facilities for that period of the week day?

A. Yes, sir.

Q. From 8:30 to 6:00 P. M. you charge for one hour \$160.00?

A. Right, sir.

Q. And from 6:30 A. M. to 8:30 A. M. you charge for one hour \$100.00?

A. Yes, sir.

Q. On Sundays you charge for one hour \$320.00?

A. Yes, sir.

Q. And from 7:00 A. M. to 6:00 P. M. on Sunday, \$200.00?

A. Yes, sir. That is for an hour's broadcast—a continued hour broadcast.

Q. Are you familiar with the rates that were charged by your station in 1929?

A. I just don't remember. I think it was \$70.00 a quarter hour—most of our programs are sold on the quarter hour basis. We have a few half hours at \$165.00, but most of them are sold on quarter hours for spot and local programs.

Q. Isn't it a fact that in 1929 your rate for week days from 6:00 P. M. to 11:00 P. M. was \$190.00?

Mr. Hotz: Objected to as not proper cross examination and immaterial.

Mr. Frohlich: I want to show the increase in these rates over the years.

The Court: He may answer.

A. May I explain why we raised the rates, your Honors?

The Court: Yes.

[fol. 1494] A. The rate in 1929, is that what you stated?

Q. 1929.

A. Was how much, sir?

Q. \$190.00.

A. At that time our national network rate was \$190.00. Now N. B. C. charges the advertisers \$320.00 and ask us to conform to it, and that is why we charge \$320.00 an hour.

Q. Will you show me anything in this table of rates, Exhibit Number 47, which differentiates between the rates charged by the network hour and the rates for advertisers on your station?

A. Yes.

Q. Where?

A. There isn't in here, but there is in the book. I will show you in the book the basic Red Network on page num-

ber 16 of this Exhibit Number 47. On page 16 the basic rate for a quarter hour on the network at night, WOW, is \$128.00 per hour. Our basic rate for spot is \$95.00 per quarter hour.

Q. I am not asking you about spot.

A. Well, now, I am saying this spot programs, not network. That is not our network rate.

Q. On page 143 of this document which has been put in evidence as plaintiffs' Exhibit Number 47, the following appears: "The following rates apply to national advertising. For local advertising rates consult station management."

A. That is for national—can I interrupt here?

Q. Yes.

[fol. 1495] A. Those rates are for a national advertiser who wants to use the entire coverage arrangement that WOC can give to him on a program they will send us, or electrical transcription. The national network rates apply back on page 16 when a program emanates from New York over the basic network of N. B. C. There is one spot program and one network program.

Q. Take the advertiser in Omaha who wants to use your station for one hour on a week day at any time between 6:00 P. M. and 11:00 P. M., what rate do you quote him for that one hour?

A. We charge him the same rate for an hour as the network rate, but the other rates are lower.

Q. You charge him \$320.00, is that right?

A. Yes. And our other rates are lower.

Q. In 1929 for that same hour you would have charged him \$190.00, is that right?

A. The same as the National network for the quarter hour.

Q. In 1929 the National Broadcasting Company, when they sent a hook-up hour into your station in Omaha, paid you at the rate of \$190.00, is that right?

A. Yes, sir.

Q. And tonight, if they send a program in through your station on a hook-up, they pay you \$320.00, is that right?

A. In 1929 they paid us for any broadcast emanating from New York on the basis of \$50.00 an hour revenue to us. Today that revenue is a little bit more than that—it is about twenty-six per cent of the \$320.00.

[fol. 1496] Q. I would like to get the figures in 1929 when

the broadcaster sent a hook-up program into your station in Omaha. He paid you how much?

A. \$50.00 an hour.

Q. For one hour for a week day between 6:00 P. M. and 11:00 P. M.?

A. Yes, sir.

Q. Today the National Broadcasting Company pays you how much for that one hour in dollars and cents?

A. Twenty-six per cent of \$320.00, whatever it is.

Q. Roughly, about \$80.00, isn't that right?

A. Right.

Q. There has been an increase for that one hour in moneys you received from the National hook-up?

A. That is right.

Q. That is true all down the line on all hook-up programs you receive?

A. Yes, except sixteen free hours we give them each week.

Q. So that for sixteen free hours they have increased your rate on the hook-up generally, isn't that it?

A. We pay actually to N. B. C., if you charge it on the hourly basis, sixty thousand dollars a year for our sustaining basis, whereas we were paid fifteen hundred dollars a month, which was much less when we take our time charges and add it up.

Q. Is your revenue from National hook-up time on the air today greater than your revenue from that same source in 1929?

A. I would say there is a difference of about two thousand dollars a month revenue.

[fol. 1497] Q. In other words, about twenty-four thousand dollars a year?

A. About twenty-four thousand dollars a year.

Q. Just on the hook-up alone?

A. That shows it in your check very definitely.

Q. What did you receive annually in gross receipts for 1938 from the National Broadcasting Company?

A. I can't tell you that.

Q. You are the general manager of this company, aren't you?

A. Mr. Frohlich, I told you before I am manager of the radio station. The radio station is a department of the Woodmen of the World Life Insurance Association, just like the receipt department and just like the insurance department for each particular state—they operate in forty-

eight states, and I do not have any access to the general report of the station except at the end of the year they tell me how much the station grossed. If the president of the company that hired me don't want me to know what they are getting in net receipts in their station, it is all right with me, and I would prefer to have it that way, and as a loyal employee I should expect that.

Q. Isn't the revenue from the National Broadcasting Company the largest single item of revenue you receive?

A. No, sir.

Q. Which item is greater?

A. The local and national spot items are greater.

Q. When you speak——

A. (Interrupting) And those are for dramatic programs and news programs.

[fol. 1498] Q. How can you tell that the spot program is greater if you have no access to the books?

A. Because of the number of contracts we have.

Q. Would the number of contracts mean to you that the revenue, gross revenue, from those contracts is greater than the money you received from the National Broadcasting Company?

A. It is in this respect, the National Broadcasting Company has more time over our station, there is no doubt about that, than we have locally to sell, but we get more money in return for our spot program than we do for the time allotted to the National Broadcasting Company. For instance, your Honors, for a spot program we get \$95.00 for a quarter hour, but we don't get \$95.00 every quarter hour on the network.

Q. How many hours a day of your nineteen hours do you devote to hook-up programs from the National Broadcasting Company?

A. I would say about twelve hours of the nineteen.

Q. And the revenue you derive from that source is quite substantial, isn't it?

A. Not as substantial as the other revenue.

Q. And you want to tell us now you don't even approximately know what that revenue was for 1938, in gross?

A. No; I am not supposed to know.

Q. What are you supposed to know in that company as general manager?

A. I am supposed to know everything that happens in that radio station with regard to running it properly, but

I am not supposed to know about the revenue. That is for [fol. 1499] my employer to know.

Q. You are the man that goes out and obtains advertising, aren't you?

A. Yes, sir.

Q. You do manage the advertising?

A. I do, but as soon as I get that contract, the job is done and I forget about his paying up at the auditing department.

Q. You know what the advertiser pays for a spot program, don't you?

A. Yes, sir.

Q. Can you tell us those figures in gross for 1938?

A. No, sir. It is around four hundred and seven thousand dollars.

Q. Where did you get that four hundred and seven thousand dollars?

A. I got that from the chief accountant of the Woodmen of the World Life Insurance Association by telephone so that I would have it if you wanted it.

Q. Well, now, who were some of your important advertisers for 1938 and 1939?

Mr. Hotz: I object to that as improper cross examination.
The Court: Objection sustained.

Q. By the way, this plaintiff's Exhibit Number 47 is a standard work in the radio industry?

A. It is not a standard work in the industry. It is the publication of a company that puts out rates of the broad-[fol. 1500] casting stations, like it puts out the rates of the newspapers for advertising.

Q. It is consulted by the people in the industry?

A. It is consulted by advertising agencies when they go about a particular spot campaign, they look in that organization's publication to find out which station he wants his products advertised over.

Q. Is it a reliable publication?

A. Certainly, it is.

Q. It is reliable, isn't it?

A. Yes, or it wouldn't live as long as it has, certainly. I also talked about page 16.

Mr. Frohlich: I offer in evidence the entire document.

Mr. Hotz: Objected to as encumbering the record.

The Court: It seems so.

Mr. Hotz: Let him tear out the pages.

Mr. Frohlich: I will put in evidence pages 16 and 140 to 143, inclusive, because they contain the data with respect to Nebraska broadcasters, just those pages.

Mr. Hotz: Objected to as immaterial.

The Court: Overruled.

Q. You said something about a spot program or a spot announcement. What is a spot announcement?

A. An announcement of one hundred words or less broadcast for an advertiser over the facilities of our station to [fol. 1501] exploit his products.

Q. What is your present rate for a spot announcement?

A. It depends on the time of day.

Q. Take week days from 6:00 P. M. to 11:00 P. M.

A. A spot announcement of one hundred words would be fifteen dollars. For a chain break-in between two dramatic programs it would be fifteen dollars.

Q. And between two musical programs?

A. We have none at the present time, except two quarter hours.

Q. I am speaking of between 6:00 P. M. and 11:00 P. M.

A. Let's see. From 6:00 to 11:00 P. M. at the present time if we put on an announcement between musical programs, the rate is twenty-five dollars, and we can get about six of them in.

Q. How much do you get for the entire day for spot announcing?

A. In gross revenue?

Q. Yes.

0

A. I don't know.

Q. Do you pay ASCAP any part of that money?

A. We certainly do; five per cent.

Q. Do you pay ASCAP for any church, religious, educational or political programs?

A. We used to put on political programs until you gentlemen finally decided you thought it would be well not to let the politicians alone. As far as spot announcements are concerned during the day or during the evening, during dramatic programs when no music is played at all, we still [fol. 1502] have to pay you five per cent.

Q. You pay five per cent for all the time on the air for which you receive revenue, don't you?

A. Right, whether any of your music is used or not.

Q. The four hundred and seven thousand dollar figure you gave us included all spot announcements, didn't it?

A. It includes every revenue WOW has, whether from talent or time on the air, no matter what it is, for script writing, for anything we have, that is the gross. Every service of the station is included in that gross amount.

Q. Who prepares the programs in your station?

A. Mr. Harry Burk, Mr. Lyle DeMoss, production manager, and myself.

Q. Don't you employ any musical arranger?

A. We do.

Q. What is his name?

A. The musical arranger we have at the present time is Mr. Ledington.

Q. What do you pay him?

A. The orchestra pays him out of the amount we give the orchestra. That is something for the contractor of the station to pay Mr. Ledington.

Q. Is he permanently stationed in your station?

A. Just as long as the orchestra wants to hire him.

Q. Have you different arrangers from time to time?

A. I think so—it is up to him.

Q. These men are skilled in music?

A. I think they are. They are musicians and make a [fol. 1503] livelihood of arranging music.

Q. They are able to do a pretty good job, aren't they?

A. I think they are.

Q. You testified on direct examination that the public domain music was very extensive?

A. It is or you wouldn't be using it yourself.

Q. As a matter of fact, the public domain contains the finest music in the world right now, doesn't it?

A. I wouldn't be competent to say it is the finest music. I think you or Mr. Paine would be better able to say. It is more extensive than your catalog, far more extensive, and as far as I am concerned I believe that if we had your organization of publishers to arrange like you have, we would have one of the finest libraries in the world, too.

Q. Well, now, with this large, extensive public domain reservoir to dip in, have you, as a broadcasting station, ever tried to make any suitable arrangements from those public domain pieces?

A. We are doing it at the present time.

Q. Well, did you ever try to do it over the years to any extent?

A. Just started it now—started about three months ago.

Q. And how do you do it?

A. Why, that is up to our particular program department. I believe we find out what is in the public domain and pick out an arrangement.

Q. And there is no trouble finding out what is in the public domain, is there?

A. No.

[fol. 1504] Q. And all you have to do is to take a piece in the public domain and turn it over to a skilled arranger?

A. It is pretty slow.

Q. Well, slow or fast, he can make a modern arrangement?

A. Yes.

Q. He can take any kind of a song and put it into swing music or a fox trot suitable for modern dancing?

A. You must realize one thing, and that is we have just started this; in fact, the industry has just started a program like it, because of the fact that we want to get away from the oppressive rates we are paying you.

Q. You can take a great many thousands of compositions now?

A. Our station only?

Q. When I say your station, I am speaking of WOW.

A. If we hired four or five thousand men to make special arrangements. Maybe you have that many.

Q. However, if you hired a sufficient number of arrangers, you could take all the public domain music and make suitable arrangements for your radio needs, isn't that so?

A. Over a period of time we might be able to do that, but 1941 is coming awfully fast and when our contract is up with you.

Q. If you did that it would involve the expenditure of some money, wouldn't it?

A. Certainly; you have got to pay a man for his work.

Q. The reason you haven't done it up to now is that you have found it much cheaper to pay ASCAP to do that?

A. No. We have tried it twice and the network scuttled [fol. 1505] it both times. We started a public domain free from copyright music. First of all it was—I forget the name of the corporation we formed—in the N. A. B., and the second one, the Bureau of Copyrights, and we started that and it was scuttled, and I hope we are going to get this one over the hump.

Q. I am not talking about N. A. B. but about your station.

A. You have got how many publishers in your organization?

Q. You are not cross-examining me.

A. You have got thousands of arrangers, and it is very difficult for one radio station to get enough music in their files to present programs and compete with other radio stations at the same time and not have an infringement suit from you.

Q. Will you listen to the question? If WOW were willing to spend the money and hire suitable arrangers and men skilled in music, couldn't you take a great many thousand compositions presently in the public domain and make them into arrangements that are suitable for your radio needs?

A. If we wanted to spend a million and a half dollars, sure.

Q. Isn't it a fact that you don't want to do it, and that it is much cheaper to pay ASCAP than do that?

A. No; we are going to do it, if you gentlemen don't treat us better than you have, and we are willing to spend a million and a half dollars to get to a point where we can actually go into the field, unless ASCAP says, "We want to negotiate rather than discuss".

Q. Now, you have commenced to do that as an industry, haven't you?

[fol. 1506] A. Yes, because of the oppressive rates you have placed upon us, whether we use your music or not.

Q. The National Association of Broadcasters has now formed a corporation for the purpose of doing that very thing, isn't that so?

A. To relieve ourselves of the oppressive rates you have placed upon us.

Q. And you are selling stock in that corporation to its members, including WOW?

A. That is right.

Q. Have you already purchased any of that stock?

A. No.

Q. The object of that corporation now is to provide from the great fund of the public domain music sufficient music for your radio stations needs?

A. And also see if we can't purchase the catalog of Mr. Irving Berlin at a particular price if he leaves your organization. All we are interested in is the copyright performance rights; we are not interested in the music. If we get the copyright performance rights from the different

publishers, they can have all the revenue and we will be perfectly satisfied.

Q. If you were able to arrange the public domain music in sufficient quantities you wouldn't get a catalog of the publishers now members of the Society, would you?

A. If we arranged the music?

Q. If you got sufficient public domain music for your needs you wouldn't need the publishers?

[fol. 1507] A. I beg your pardon: We have made popular your music and exploited your music with our facilities at no charge to you, and advertised your music for years and made it popular, and we can't say to the public it is out of the window like that.

Q. Would you want to continue using our music?

A. Certainly, at equitable rates at, we will say, so much per program and put it on a per program rate, and we will pay you that.

Q. If there were no ASCAP at all, would you still want to continue using music now owned by ASCAP members and the repertoire?

A. Certainly.

Q. You would want it?

A. Yes, sir; that would be fair. I will tell you why; I would like to tell you why.

Mr. Hotz: I think the witness ought to be permitted to answer that.

The Court: I think not.

Q. In the event there were no ASCAP at all in the United States, and all the music was in the hands of the copyright owners of the American Society, you say you want to continue using that music in your radio station operations? Please tell the Court how you are going about to protect yourself against infringement in your operations.

A. Well, there is no ASCAP now?

Q. No.

A. I would go to Irving Berlin and ask him the price on [fol. 1508] his catalog, and I would go to the other members of your publishing organization and the other publishers and ask them for a price, and if their price was equitable we would play their music; if not equitable, we would deal with somebody else.

Q. Suppose there were no catalogs, how would you get the individual pieces of music?

A. If there were no catalogs?

Q. Yes.

A. In other words, a restraint in trade?

Q. If there were no ASCAP and you wanted to use ASCAP music.

A. I say if there were no ASCAP the catalog owners are certainly going to try to get revenue for those catalogs, and we would buy them and pay for them—they are going to do business with us.

Q. Suppose some of those people want a great deal of money from you, what would you do?

A. We would pay for it if we thought it worth it.

The Court: This is getting into remote speculation.

Q. Did you ever see this advertisement of Lang-Worth in the Broadcasting Magazine of July 15, 1939?

A. It is the largest public domain recorded library in the world. Yes, I saw that.

Q. Do you agree that is the largest?

A. It has one hundred hours, that is all, just one hundred hours, that is all, Mr. Frohlich, and that certainly isn't enough to run a radio station today.

[fol. 1509] Q. They now propose to have two hundred additional hours.

A. That would make three hundred hours, but still it would not be enough to run a radio station on.

Q. Not on Lang-Worth alone, but it is a pretty substantial number of hours from one source?

A. A stop gap for about three weeks.

Q. You would run—

A. (Interrupting) I mean by putting in a lot of other programs of a talking nature and so forth. You couldn't run a program on any station—it is worth about fifteen minutes a day at the present time.

Q. Did I understand you to testify this morning you don't originate any programs in your studio; they are transmitted or broadcast elsewhere?

A. At the present time, no.

Q. Do you pick up music in and around the State of Nebraska and broadcast it from your studio?

A. No.

Q. Well, did you ever hear of the Music Box?

A. Yes.

Q. That is a dance hall in Omaha?

A. Yes.

Q. Have you been broadcasting any music from that dance hall over your station?

A. Yes, sir.

Q. I show you this little program and ask you whether that has been circulated around Omaha?

A. No. This was on September 14th—it was September [fol. 1510] 14th of last year. I told you last year we had three programs per week over the network. That was orchestras from Omaha—two from our studio orchestra and once a week from the Music Box—that was last year.

Q. You don't do that this year?

A. No.

Q. Now, when you sell your time on the air to an advertiser, you try to convince him you have a very large listening audience, don't you?

A. Why, certainly we do.

Q. As a matter of fact, that is a most important sales argument, is it not?

A. That is our audience appreciation; otherwise, the advertiser is not going to advertise.

Q. In how many states are your broadcasts heard?

A. If broadcasting a local program?

Q. Yes.

A. I think it will reach the northern part of Kansas and the western part of Iowa and reach a portion of Nebraska, and it will reach a portion of South Dakota and I think a portion of lower Indiana and of Minnesota, and that is about all.

Q. Will it reach Detroit, Michigan?

A. No. They might be able to hear our sky-wave there, like you are able to hear Los Angeles, but that is a fluke as far as broadcasting is concerned.

Q. Today is Wednesday, September 20th, isn't it?

A. Yes, sir.

[fol. 1511] Q. On your program of the Music Box you will note, Wednesday, September 20th, 27th and October 4th. Please look at that.

A. Yes, sir.

Q. Does that refresh your recollection whether that is last year's program or this year's program?

A. I will tell you this, that the advertising of this particular Music Box on here is wrong, if it is this year, because

we are not emanating any programs on the N. B. C. network at the present time, because the only time we did that, N. B. C. made such a rumpus.

Q. I didn't ask you that; I asked you whether it was over your station.

A. Yes, but not N. B. C.

Q. Is it your testimony that station WOW did broadcast a program emanating at the Music Box this year?

A. Network programs? If you are talking about programs from the Music Box that were broadcast locally, yes, but we don't broadcast over the network from the Music Box.

Q. So you are mistaken when you said this was distributed last year?

A. No; I said that the advertisement was wrong if they state on there we are broadcasting over N. B. C. from Omaha, because we are not and have not since last spring.

Q. But you are broadcasting over your own station?

A. We are broadcasting from the Music Box over our own station, but not on any network.

Q. When you broadcast from the Music Box you don't make any inquiry as to what musical compositions come [fol. 1512] over that Music Box program at all, do you?

A. No, because we have an ASCAP license and it protects us, it is supposed to. Nobody ever brought suit—we don't know whether it does or not.

Q. Does this advertisement represent an advertisement issued by your station?

A. Yes, sir.

Q. How recently?

A. That advertisement, I think, was issued in the fall of 1937 or the fore part or the first part of 1938.

Q. Does it purport to show the coverage of your station in the surrounding territory?

A. That is where we have most of our coverage, in the six cities we dominate as far as appreciation is concerned.

Mr. Frohlich: Offer in evidence plaintiffs' Exhibit Number 50.

The Witness: Mr. Frohlich, Mr. Searle of the Central States will disagree with that seriously.

Mr. Hotz: I object to this plaintiffs' Exhibit Number 50 as not proper cross examination, and tending to encumber the record. The exhibit I am referring to is nothing more nor less than an advertisement of the WOW station.

Mr. Frohlich: It shows the extent of the operation of this station, and the field it covers.

The Court: It may be received.

Mr. Frohlich: Also offer in evidence this program of the [fol. 1513] Music Box, plaintiff's Exhibit Number 51.

Mr. Hotz: Objected to as immaterial.

The Court: I don't see the materiality of that.

Mr. Frohlich: Withdraw that offer.

Q. Have you ever read "Radio Day"?

A. No. I have read "Radio Daily" quite often.

Q. Are you familiar with some of the statistical figures of the industry?

A. No. I am familiar with our own figures from the standpoint of coverage, as I have already given you. I am not competent to speak about stations throughout the United States.

Q. Have you ever seen these figures I show you, before?

A. No, sir.

Q. Did you ever have an author and composer in the State of Nebraska come into your station and ask to have one of his songs played on your station?

A. Yes, sir.

Q. How recently did one come in?

A. Not over six months ago.

Q. Do you know the name of the particular author?

A. Yes.

Q. What was his name?

A. He is a judge in the City of Omaha, Judge Palmer.

Q. He asked you to play one of his numbers?

A. That is right.

[fol. 1514] Q. Is he a member of ASCAP?

A. No.

Q. Did you play one of his numbers?

A. No.

Q. Prior to that request have there been other requests from time to time of citizens who are residents of the State of Nebraska and who have come into your station?

A. Yes, sir.

Q. Have you on occasions played such compositions?

A. They have come to us with this in mind, if we would play their selection they would be very, very willing to let us play it free so that they would be able to sell some sheet music.

Q. On the occasions that you played these compositions they were played without any performance fee?

A. That was their offer.

Q. And you accepted the offer?

A. We accepted the offer. It was not published by one of your organization.

Q. Did you ever in your life pay any composer or author a penny for performing his compositions over your station outside of ASCAP?

A. Yes.

Q. And SESAC?

A. Yes.

Q. Whom did you pay?

A. I believe a gentleman out in Montana. We wanted to play his selection on a special salute and we paid him a [fol. 1515] certain amount of money, I forget what it was—he asked us to pay for it, and we did.

Q. Do you remember what you paid for it?

A. I think around one dollar or something like that.

Q. Did you ever pay any more than one dollar to an author or composer?

A. I don't think so. The general conception of the composers is that they can't get on the air unless they are members of your particular corporation, and they certainly don't want to take any exception to your organization because of the fact that they would like to belong to it some day so that they could collect fees too.

Q. Did you ever play any Davis & Schwegler music?

A. Yes.

Q. You don't pay for that, do you?

A. For the copies, yes.

Q. You pay for the transcription record?

A. We pay for the orchestrations, and they want us to play it so that they can compete with you, and that is the reason why we play it for them.

Q. You don't pay them any fee for performing for profit in your organization, do you?

A. We will have to pay them if we continue to use their music.

Q. Are you paying them presently?

A. No. They said, "Here, play this for a while and see if it becomes popular, and if there are many requests for it, and if you do, we will come back and strike a bargain."

[fol. 1516] Q. You do popularize some of them by playing them?

A. Certainly, for years.

Q. And you can popularize a great many other compositions by playing them constantly?

A. Yes.

Q. You could take the compositions in the public domain and make them quite popular, if you wanted to?

A. Yes, but it would take a million and a half to do it.

Q. You don't want to spend a million and a half dollars, is that right?

The Court: This has been gone over so often, gentlemen.

Q. Did you ever receive any communication from ASCAP offering to give you an index of musical compositions?

A. A card file, but that is not your catalog.

Q. Did they offer to give you a list of musical compositions which were publicly used by radio broadcasters?

A. They will send any radio station now a catalog of tunes by placing stickers on what ASCAP thinks is popular. That is not what we believe is popular. We make it popular for you. We want your catalog and then we can do business with you, but we don't know what we are buying from you gentlemen.

Q. Have you ever accepted the offer of ASCAP to take one of these collections of musical compositions?

A. You mean this card file?

Q. Yes.

A. Which is sent out to radio stations?

[fol. 1517] Q. Have you ever taken them up on it and asked for it?

A. I think it is laying around some place, but it is nothing to us.

Q. It was offered gratis?

A. If we bought files and kept them up and so forth. It was like paying for books fifteen dollars a month and paying for them in seven years.

Q. Do you know how many compositions there are in that list at the present time?

A. No, I have never inquired because it wasn't the catalog—I want your catalog.

Q. Have you ever been sued for infringement by anybody?

for performing without any right or authority any musical composition on the air?

A. We were joined in one suit in 1932, a certain composer in Europe sued us as well as the National Broadcasting Company for broadcasting over our station; that was the only time. We were threatened by Warner Bros. when they dropped out of ASCAP, and we had to pay them an additional nine hundred dollars for the use of their music until we got their own catalog straightened out and deleted.

Q. This suit in 1932 was by a composer not a member of ASCAP?

A. No, but the National Broadcasting Company made settlement with him.

Q. Have you ever been sued by anyone for infringement of any compositions owned or controlled by members of ASCAP?

A. No, except that Warner Bros. threatened us with suit for infringement at the time you claimed they were still in [fol. 1518] your group, but still we had to pay them nine hundred dollars.

Q. As a matter of fact, you know Warner Bros. were out of the membership of ASCAP for a six months period?

A. Yes, but you claimed that any suits brought you would be pleased to fight.

Q. And were any suits brought?

A. No, because you made a deal with Warner Bros. and got them back in, and you got Joe Malec back in.

Q. During the period Warner Bros. was out of ASCAP did you continue to use any of their compositions?

A. For the first three months we did, and then last three we didn't.

Q. When you did, you knew you had no right to do it?

A. We certainly did; we paid three hundred dollars a month for it.

Q. There is a station in Omaha called KOIL?

A. Yes, sir.

Q. Do you know of your own knowledge whether the transmission comes in from Nebraska or from Iowa?

A. You mean network service or their own transmission?

Q. Yes.

A. Their own transmitter is located on the Iowa side of the river.

Mr. Frohlich: That is all.

Redirect examination.

By Mr. Hotz:

Q. Mr. Gillin, attached to some of the depositions that [fol. 1519] were taken there are a large number of catalogs that were called for in the interrogatories and in the depositions of the various publishers of ASCAP music, one of them is Exhibit Number 5 to the depositions and another one is 7-A, thirteen booklets of Carl Fischer, another one is Exhibit 2-B of Fischer, another one is 2-C of Fischer, and Exhibit Number 7-O of Carl Fischer, and another one Exhibit 7-E of the same publishing company, another one 7-F, another one 7-G from the same company, and 7-A and 7-D and 7-K, 7-L, 7-M, and then in Irving Berlin's another one 5-A, and I will ask you to just tell us briefly without examining those what those are? Take, for example, the first one here, the copyrighted musical works of Irving Berlin, Inc.

The Court: Doesn't it already appear in the testimony?

Mr. Hotz: Not what I want to bring out, your Honors please.

A. It states it is a catalog of copyrighted music of Irving Berlin, Inc.

Q. It has been testified to here that the copyrights are owned by Irving Berlin in this catalog, that is, the composers and Berlin have made a deal and the copyrights are vested in this organization, Irving Berlin, Inc., so far as these numbers are concerned. Now, the question was asked you in connection with the event of ASCAP being dissolved or going out of business or being declared an unlawful monopoly, what then would you do, for example, in connection with Irving Berlin music if you wanted Irving Berlin [fol. 1520] music. Who would you then deal with if you didn't have ASCAP to deal with?

A. With Irving Berlin, Inc.

Q. For the public performance rights?

A. Yes, sir.

Q. And what about the other publishing houses?

A. I would deal with them each individually.

Q. And would you attempt to negotiate and select from his catalogs the pieces you wanted the public performance rights and attempt to negotiate for the price that they would

charge for public performance rights in the State of Nebraska for those pieces?

A. Yes, sir.

Mr. Frohlich: I move to strike out the answer, and object to the question as already having been testified to.

The Court: I think it has been. Sustained.

Q. That would be true in connection with all these other catalogs of the members of ASCAP called for in this suit, and some of which have been furnished, is that right?

A. Yes, sir.

Q. In other words, it would throw open to you an opportunity to go and shop and deal from one of these big publishing houses to the other and pick out what you wanted in connection with vocal and instrumental music for public performance purposes, is that right?

A. It would open up the competition of these particular publishers for their particular catalogs on the air.

[fol. 1521] Q. Is there a difference in the style and kind of music these various publishing houses put out, some better and some not so good?

A. I think one catalog, obviously, is worth more than another.

Q. Do the different publishing houses have different styles of music, different kinds?

A. I imagine they do, but I have never examined that closely. When you are going out to compete in the open field you are going to decide what catalogs you are going to buy, and you are going to buy a certain type of music to take care of the desires of your radio audience.

Q. Would it be beneficial to your organization to have the right and privilege of building up your own musical library from the published works of the publishing houses so that you wouldn't have to go into the publishing business?

Mr. Frohlich: I object to that.

The Court: Objection sustained as argumentative, calling for a conclusion, and speculation.

Q. In connection with the question that was put to you by counsel on cross examination about the power and authority of the committee of the National Broadcasting Association, the last committee in dealing with ASCAP for contracts, I do not think you answered whether or not that committee of the National Association of Broadcasters has

any authority or power to deal for WOW or any of these stations in Nebraska and bind them to any agreement of [fol. 1522] any nature or kind with reference to that.

Mr. Frohlich: Just what committee do you mean?

Mr. Hotz: The last committee he spoke about.

Mr. Frohlich: He spoke about committees in 1932.

The Court: That is so indefinite. Objection sustained.

Q. Was there a committee in 1934 that you spoke about?

A. I spoke about a committee appointed by the Board of Directors to carry out the discussions with ASCAP in regard to renewing the ASCAP contracts of 1932 and 1934.

Q. When was that appointed?

A. The first one in 1932 and the second one in 1934, and third one appointed, I imagine, around four or five months ago.

Q. In that last committee that was appointed have they any authority to bind station WOW in connection with any dealings it might have with ASCAP?

A. No. In explanation I should say this as to what authority the committee has. The committee is appointed by the Board of Directors to carry on discussions with ASCAP, and if they believe that they have got a contract from ASCAP where we can pay on a program that is to be paid for at the source, and the broadcasters will pay ASCAP for only such music as they use on their programs, that is, ASCAP music and records, on a per program basis, [fol. 1523] then they will come back to the industry and offer it to each individual broadcaster, and then it is up to that broadcaster whether he wants to take that contract with ASCAP or not. In other words, it was appointed to carry on for the industry, but it has no right to act for any individual broadcaster in the United States.

Q. And that goes for the Nebraska stations?

A. Every station in Nebraska.

Q. In order to prepare music for use of WOW station from the public domain, would it be necessary—I am speaking now for WOW alone—for you to enter into the publishing field?

Mr. Frohlich: I object to that. It has already been testified to.

The Court: Sustained.

Q. Does it take special machinery and equipment to publish musical compositions?

A. Yes, a great lot of it.

Mr. Frohlich: I object to that.

The Court: Objection sustained, and the answer stricken out.

Mr. Hotz: That is all.

Recross-examination.

By Mr. Frohlich:

Q. Look at this again. Isn't this the exact copy of the contract?

A. I wouldn't want to say unless I took the contract and compared it with you. I will be glad to send it to you, and [fol. 1524] let the Court compare it.

Mr. Frohlich: That is all.

Mr. Hotz: We wanted the number of radios in use in the State of Nebraska.

The Witness: I will be glad to send that to you.

If it please your Honors, I was subpoenaed by ASCAP and I would like to be released.

Mr. Frohlich: You are released of your duties.

Witness excused.

[fol. 1525] The following exhibits, being a part of the depositions and the testimony of the Nebraska Case, are, hereby, readmitted in evidence, according to the stipulation of the parties in open court, and renumbered, for the purposes of this trial, as follows:

Former Number	New Number
No. 15	No. 6
No. 16	No. 7
No. 17	No. 8
No. 21-A	No. 9
No. 21-B	No. 10
No. 21-C	No. 11
No. 21-D	No. 12
No. 21-E	No. 13
No. 22	No. 14

Former Number	New Number
No. 23	No. 15
No. 24	No. 16
No. 25	No. 17
No. 27	No. 18
No. (—)	No. 19

[fol. 1526] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO STATEMENT OF EVIDENCE, DEPOSITIONS AND
EXHIBITS—Filed November 2, 1940

It Is Hereby Stipulated between Counsel for plaintiffs
and counsel for defendants as follows:

1. That the stenographic transcript of the proceedings had at the trial of the cause on April 15 and 16, 1940 be included in the record as reported by E. Marshal Stiefel, shorthand reporter, being pages 1 to 732 inclusive of such minutes of said trial, and that the same shall also be designated for printing accordingly.
2. That the stenographic transcript of the depositions of witnesses taken in New York City on February 6 to 9 inclusive, 1940 be included in the record as reported by [fol. 1527] Laurence S. Muller, shorthand reporter, being pages 1 to 489 inclusive of such depositions, and that the same shall also be designated for printing accordingly.
3. That the indexes appended to both of the transcripts mentioned above shall be included in said transcripts.
4. That the exhibits introduced in connection with the above transcripts be incorporated in the record in full, or condensed, or omitted, as indicated by the annexed statement of exhibits, and that the same shall also be designated for printing accordingly.
5. This stipulation shall serve for both the defendants' appeal and any cross-appeal which may be taken by the plaintiffs.

6. By entering into this stipulation, neither party waives any objection which he has made to any evidence introduced at the trial.

George Couper Gibbs, Attorney General; Tyrus A. Norwood, Assistant Attorney General; Lucien H. Boggs, Andrew W. Bennett, Solicitors for Defendants. Frank J. Wideman, Louis D. Frohlich, Herman Finkelstein, Manley P. Caldwell, Solicitors for Plaintiffs.

Dated, Gainesville, Florida, November 2nd, 1940.

[fol. 1528]

Statement of Exhibits

EXHIBITS FILED AT TRIAL

PLAINTIFFS' TRIAL EXHIBIT 1

Alphabetical gummed sticker list compiled by the Society of 2870 music publishing houses located throughout the United States, giving the name and address of each such house, and separately indicating those which are members of the Society.

This exhibit contains a list of approximately 200 copyrighted compositions, of which the lyrics or words were written by Gene Buck. Such compositions were copyrighted at various dates between 1912 and 1931. Most of them were used in the "Ziegfeld Folies" of various years. Specimen compositions giving the collaborator, the publisher, and the date of copyright, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Remarks
Chu Chin Chow	Dave Stamper	Harms, Inc.	6/ 6/17	Ziegfeld Folies of 1917
Daddy Has a Sweetheart and Mother Is Her Name	Dave Stamper	Wm. H. Penn, Gene Buck & Dave Stamper (Music)	10/ 7/12	
Florida, The Moon and You	Rudolf Friml	Harms, Inc.	6/30/26	Ziegfeld's Palm Beach Girl
Garden of My Dreams	Dave Stamper & Louis A. Hirsch	Harms, Inc.	6/21/18	Ziegfeld Folies of 1918
Hello Frisco	Louis A. Hirsch	M. Witmark & Sons	6/21/15	Ziegfeld Folies of 1915
In Khornean	Victor Herbert	Harms, Inc.	6/27/21	Ziegfeld Folies of 1921
Just Because You're You	Jerome Kern	T. B. Harms, Inc.	6/25/17	Ziegfeld Folies of 1917
Legend of The Golden Tree	Victor Herbert	Harms, Inc.	6/27/21	Ziegfeld Folies of 1921
Love Boat	Victor Herbert	Harms, Inc.	6/26/20	Ziegfeld Folies of 1920
Maid Of Gold	Rudolf Friml	Harms, Inc.	12/ 4/23	Ziegfeld Folies of 1923
My Man	James Hanley	Harms, Inc.	3/31/20	Girls of 1920
'Neath The South Sea Moon	Dave Stamper & Louis A. Hirsch	Harms, Inc.	6/30/22	Ziegfeld Folies of 1922
No Foolin'	James F. Hanley	Harms, Inc.	2/ 3/26	Palm Beach Nights
Princess of My Dreams	Victor Herbert	Harms, Inc.	6/27/21	Ziegfeld Folies of 1921
Rose of My Heart	Albert Sernay	Harms, Inc.	7/ 3/24	Ziegfeld Folies of 1924
Settle Down In A Little Town	Werner Janssen	Harms, Inc.	3/28/25	Ziegfeld Folies of 1924-25
Tulip Time	Dave Stamper	Harms, Inc.	6/21/19	Ziegfeld Folies of 1919
Underneath The Japanese Moon	Gus. W. Haenschen	Harms, Inc.	7/16/14	Ziegfeld Folies of 1914
When The Lights Are Low	Jerome Kern	Harms, Inc.	6/21/16	Ziegfeld Folies of 1916
Where Is My Wandering Boy Tonight	Dave Stamper	Shapiro, Bernstein & Co.	2/11/14	
Can't You Hear Your Country Calling	Victor Herbert	T. B. Harms & F. D. & H.	6/12/17	Ziegfeld Folies of 1917

Broadcast Music Inc.

Performing Right License Agreement

AGREEMENT made this day of , 19 . . . , between BROADCAST MUSIC, INC., a corporation organized under the laws of the State of New York (hereinafter called MUSIC) with principal offices in New York, New York, and

Strike out Inapplicable Lines	{	A corporation organized under the laws of the State of A partnership An individual residing at (hereinafter called BROADCASTER) with offices located at City of , State of
-------------------------------------	---	---

Witnesseth:

I. MUSIC hereby granted to BROADCASTER a non-exclusive license to perform by radio broadcasting over Station all musical works the copyrights or rights to grant broadcasting performing licenses of which MUSIC may, during the term hereof, own. MUSIC agrees to deliver to BROADCASTER from time to time during the term hereof lists of musical works covered by this license. The rights granted hereby shall include the right to broadcast dramatic performances of such musical works as MUSIC at any time shall have given notice to BROADCASTER that it owns the dramatic performing rights thereof.

II. BROADCASTER agrees to pay to MUSIC, as a license fee hereunder, such sum, not in excess of \$, as MUSIC may require BROADCASTER to pay, payment to be made in instalments as and when required by MUSIC, within ten days after written demand therefor, provided that no demand shall be made for the payment of any instalment or instalments aggregating in excess of 15% of the foregoing maximum total license fee during any consecutive thirty day period. In the event that BROADCASTER shall fail to make any payment when and as due, MUSIC may, in addition to any and all other remedies which it has at law or in equity, terminate this license upon ten days' notice in writing.

III. MUSIC agrees to indemnify, save and hold harmless and to defend BROADCASTER, its advertisers and advertis-

ing agencies, from and against all claims, demands and suits that may be made or brought against BROADCASTER, its advertisers and advertising agencies, with respect to the performance under this license agreement of any material licensed hereunder, provided that this indemnity shall not apply to broadcasts of any composition performed by BROADCASTER after written request from MUSIC to BROADCASTER that BROADCASTER refrain from performance thereof. BROADCASTER agrees to give MUSIC immediate notice of any such claim, demand or suit, and agrees immediately to deliver to MUSIC all papers pertaining thereto. MUSIC shall have full charge of the defense of any such claim, demand or suit, and BROADCASTER shall cooperate fully with MUSIC therein.

IV. The term of this license shall commence on such date, not later than April 1, 1940, as may be designated in writing by MUSIC, provided, however, that the term of this license shall be for not less than one year from the commencement date thereof. This license shall be non-assignable, except to the person, firm or corporation legally acquiring the Federal Communications Commission license of the broadcasting station designated in Article I hereof.

V. BROADCASTER, on written request made on no less than one week's notice, agrees to furnish to MUSIC weekly lists of BROADCASTER's performances of musical compositions under this license, indicating the compositions performed by title and composer or by such other convenient method as may be designated by MUSIC.

VI. In the event that the Federal Communications Commission revokes or fails to renew the broadcasting license of BROADCASTER, or in the event that the Governmental rules and regulations applicable to the station referred to in Article I hereof are suspended or amended so as to forbid the broadcasting of commercial programs by BROADCASTER, BROADCASTER may notify MUSIC thereof and MUSIC, within ten days of the receipt of such notice, shall, by written notice to BROADCASTER, at MUSIC's option, either terminate this license, or shall suspend this license and all payments and service hereunder for the period that such condition continues. In the event that MUSIC elects to suspend this license, such suspension shall not continue for longer than six months, and this license shall automatically terminate at the end of six months' suspension. In the event that the

condition giving rise to the suspension shall continue for less than six months, Music, at its option, and on written notice to BROADCASTER may reinstate this license at any time within thirty days after the cessation of such condition.

VII. Music agrees, (a) that all of the initial performing right license agreements between Music and its stockholders shall terminate simultaneously, (b) that no demand will be made by Music for any instalment payment in accordance with the provisions of ARTICLE II hereof unless Music simultaneously demands instalment payments in the same percentage from all other stockholders, and (c) that the initial performing right license agreements between Music and its stockholders shall each provide for the payment to Music of such sum as Music shall demand, not, however, in the aggregate in excess of a sum equal to 40% of the total sums paid or payable to the American Society of Composers, Authors and Publishers as performing right fees for the entire calendar year 1937 for or with respect to the radio broadcasting station named in such agreement with Music (except that a different maximum amount may be specified in the initial license agreement of any stockholder if performing right fees were not paid or payable to the American Society of Composers, Authors and Publishers for the entire calendar year 1937, for or with respect to the radio broadcasting station named in such license agreement, or if there has been a material change in the power or hours of operation of the radio broadcasting station named in such license agreement).

VIII. The term "stockholder-licensee" as hereinafter used shall include only such stockholders as have uninterruptedly held performing right licenses from Music during all periods that performing right licenses of Music shall have been available. For the purposes of this paragraph "stockholder-licensees" are hereby divided into the following categories: (1) stockholder-licensees whose radio stations have no network affiliations; (2) stockholder-licensees operating both radio stations and national networks and (3) stockholder-licensees operating radio stations affiliated with, but not operated by, national networks. In the event that Music, with respect to performing right license agreements for any period subsequent to the expiration of this license, shall propose, (a) the alteration of ma

terial terms of licenses or the method of fixing or allocating [fol. 1532] performing right license fees, so as to effect a change discriminatory against any of the foregoing categories of stockholder-licensees, or (b) the denial of licenses to stockholder-licensees, or (c) the omission from future performing right license agreements with Music's stockholders of provisions to the same effect as any of those contained in this Article VIII, then, Music shall give notice of such proposal to all stockholder-licensees in any category which contains adversely affected stockholder-licensees, and, in the event that notice of objection to such proposal shall not, within thirty days, be given to Music by stockholder-licensees to whom such notice was given, and whose annual license payments to Music under the license agreements with stockholders in effect at the time of such proposal shall aggregate one-third or more of the annual license payments made by all stockholder-licensees in the same category, such proposal may be put into effect.

IX. This agreement shall become effective as a license agreement only upon the giving of notice by Music that, in its opinion, Music has sufficient funds and license agreements to permit effective operation of Music, and upon the subsequent execution and delivery of a copy hereof by Music, and such notice, if given, shall be given on or before February 1, 1940, or such later date, not more than 30 days thereafter, as shall be fixed by Music. In consideration of Music using its best efforts to obtain the signature of agreements similar to this by other broadcasters, and in consideration of the signature of agreements similar to this by other broadcasters, BROADCASTER agrees that this instrument shall constitute a continuing offer which cannot be revoked by BROADCASTER prior to March 2, 1940.

X. All notices required or permitted to be given hereunder shall be duly and properly given if mailed to the party to whom such notice is required or permitted to be given, by United States mail, postage prepaid, addressed to said party at its main office for the transaction of business. This agreement constitutes the entire understanding between the parties and shall be construed in accordance with the laws of the State of New York.

Broadcast Music, Inc., by _____ (Corporations or partnerships sign here). By _____ (Individuals sign here).

(This agreement should be executed in duplicate by the licensee of the station named in paragraph I hereof. If such licensee is a corporation, the title of the officer signing the agreement should be stated.)

(The National Broadcasting Company and the Columbia Broadcasting System have declared their approval of the principle of clearance at the source when an economically and legally feasible method of so clearing can be devised which is not unduly burdensome to the said networks in comparison with their present method of operation and payment, and they have declared that at an appropriate time the said networks will make an earnest cooperative effort with the network affiliates to work out such a feasible plan of clearance at the source.

[fol. 1533] The National Broadcasting Company and the Columbia Broadcasting System also have declared their willingness, at an appropriate time, to consider any proposals by their affiliates for a new method of distributing the cost of music, which is not unduly burdensome to the said networks in comparison with their present method of operation and payment, and that nothing in this license agreement shall be construed as working against an earnest cooperative effort by the various elements of the industry to such end, such effort to involve consideration not only of future payments of license fees to Broadcast Music, Inc. but also of payments to other organizations.)

[fol. 1534] PLAINTIFFS' TRIAL EXHIBIT 4

Copy

April 12, 1938.

Mr. L. S. Mitchell, Manager, Radio Station WDAE, Tampa
Terrace Hotel, Tampa, Florida.

MY DEAR MR. MITCHELL:

You are of course aware of the contents and intention of the recently enacted Florida anti-ASCAP Statute. And, of course, you know that a Federal Constitutional Court has granted a temporary injunction against enforcement of the Statute and has said "that there is grave doubt of the constitutionality of the Act."

The point is that the promoters of this legislation apparently would prefer to deal with copyright owners individually for their respective licenses to publicly perform their compositions instead of dealing through ASCAP as a central clearing house for a single collective license.

I have written twice to the principal broadcasting promoter of the legislation asking him if that would be his preference, but so far he has failed to answer. Personally, I believe that nothing conceivable would make a broadcasting operation more difficult than the necessity of dealing directly with hundreds and even thousands of different copyright owners scattered all over the world. But, I may be wrong.

You are a practical operator. Would you mind telling me with entire frankness and candor just what your preference would be as between the two different methods of securing licenses to publicly perform copyrighted music? ASCAP desires to be constructive in its consideration and treatment of this matter. We desire above all to have a friendly and good will relationship with our licensees.

The present formula was adopted after extended conferences with the N. A. B. It met with the approval of that organization. Until now not one single broadcaster in the United States has ever asked us to arrange for him to deal directly with individual copyright owners. It is my prediction that none ever will.

Be that as it may, I would appreciate a frank, candid comment from you, and be assured that it will be carefully considered in an entirely friendly manner.

With all good wishes.

Yours very truly, E. C. Mills.

ECM:pk
ADR

[fol. 1535] PLAINTIFFS' TRIAL EXHIBIT 5

Bill introduced in Florida Legislature, 1939 session, repealing certain sections of Chapter 17807, Laws of Florida, 1937, and amending certain other portions of said chapter. Same as Exhibit "M" to Further Supplemental Bill.

926

(Here follows 1 photolithograph, side folio 1536.)

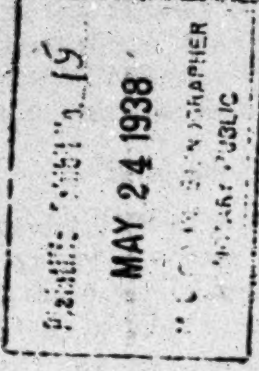
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CHAPPELL & CO., LTD.
LONDON

PLAINTIFFS' TRIAL EXHIBIT 6

HARMS
INCORPORATED
62-64 WEST 43RD STREET
NEW YORK

CABLE ADDRESS
"WANG"



February 21, 1927.

New Fields and Vincent Youmans,
New York City.

Gentlemen:-

Confirming our arrangement in reference to the musical numbers of your new musical play tentatively entitled "Hit the Deck" (title subject to change), hereinafter called the "Play", we agree to pay you a royalty of two cents (2¢) per copy for each regular piano-vorte copy of music of the Play published, sold by and paid for to us in the United States of America and Canada.

We hereby pay you the sum of One Thousand (\$1000) Dollars as an advance upon the first royalties accruing to you hereunder, receipt of which is hereby acknowledged by you.

We agree to make up accounts of royalties to the first day of January, April, July and October in each year, and to make payments of all royalties due you hereunder within thirty days thereafter.

On your part, as a consideration for the payment of said royalty and the advance made you thereon, you agree:

(a) That said Play will be produced by you in a first-class manner in a first-class theatre in the Borough of Manhattan, City of New York, not later than June 1st, 1927, in default of which you agree to pay us upon demand all sums advanced by us to you hereunder.

(b) That you will not permit or allow to be rendered or performed in the Play at any time or place any musical number whatsoever (regular or interpolated) unless the exclusive publication rights thereof are first vested in us.

If the foregoing meets with your approval, please indicate your acceptance hereon, and this letter and your acceptance will constitute the entire contract between us.

Very truly yours,

HARMS INC.
BY

APPROVED & ACCEPTED:
New Fields & Vincent Youmans

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[fol. 1537]

PLAINTIFFS' TRIAL EXHIBIT 7

Agreement made this 8th day of February, 1923, by and between George Gershwin, of the City of New York, hereinafter designated the "Composer", and Harms Inc., a New York corporation, hereinafter designated the "Publisher",

Witnesseth

For and in consideration of the sum of One Dollar and other good and valuable considerations by each of the parties hereto to the other in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby mutually acknowledged, the parties hereto do promise and agree as follows:

Whereas, the Composer is a composer of music for musical compositions; and

Whereas, the Publisher is engaged in the business of publishing and selling sheet music, musical compositions, etc.; and

Whereas, the Publisher is desirous of acquiring from the Composer, the sole, exclusive, absolute and unlimited right, license, privilege and authority, in and for the civilized world, to publish, copyright, print, reprint, copy and vend all the music for musical compositions in whole or in part composed and written by the Composer, alone or in collaboration with others, during the period hereinafter stated, and the Composer is agreeable thereto; Now, Therefore:

First. The Composer hereby gives and grants unto the Publisher the sole, exclusive, absolute and unlimited right, license, privilege and authority to publish, copyright, print, [fol. 1538] reprint, copy and vend (inclusive of use upon parts of mechanical instruments) in and for the civilized world, during the terms of the respective copyrights and all renewals of copyright thereof, all the music for musical compositions (whether separate numbers or books or scores of musical plays), in whole or in part conceived, created, composed and written by the Composer, alone or in collaboration with others, during the period of two years from the date hereof.

Second. The Composer agrees to deliver to the Publisher at its place of business in the Borough of Manhattan, New York City, as soon as the same shall have by him been

written, a complete manuscript of each and all of such music.

Third. The Composer hereby gives to the Publisher full permission and authority to publish, copyright, print, reprint, copy and vend in the civilized world, the music of the ~~Composer in conjunction~~ with the lyrics of any author, and the Publisher may, in its discretion, adopt any name or title for any composition published hereunder.

Fourth. The Publisher agrees that it will receive from the Composer any and all music composed and written as herein provided and will publish, copyright and place the complete musical compositions on sale at such times and places as the Publisher may deem proper and advisable and to the best interests of the parties hereto.

Fifth. The Publisher agrees to pay to the Composer, and the Composer agrees to accept, as full compensation, three [fol. 1539] cents (3¢) per copy upon each and every regular printed pianoforte copy of a musical composition, separately published and sold by and paid for to the Publisher under this agreement in the United States and Canada; ten cents (10¢) per copy for each and every copy of the piano selection of a theatrical representation published and sold by and paid for to the Publisher, under this agreement, in the United States and Canada, and fifteen cents (15¢) per copy for each and every copy of the vocal score of a theatrical representation published and sold by and paid for to the Publisher, under this agreement, in the United States and Canada.

Sixth. The following are exempt from royalty:

Professional pianoforte copies; copies known as new issues; copies circulated as complimentary or for advertising purposes.

Seventh. The Publisher also agrees to pay to the Composer 50% of the aforesaid American royalty rate for each regular pianoforte copy sold in countries outside of the United States and Canada of the compositions written by the Composer, whether such publication and sale shall be made direct by the Publisher or any other person, firm or corporation to whom or which such rights may be by the Publisher assigned.

Eighth. The Publisher further agrees to pay to the Composer twenty-five per cent (25%) of any and all net royalties or other net sums that the Publisher shall or may receive from the use of the compositions of the Composer [fol. 1540] delivered to the Publisher hereunder upon parts of instruments serving to reproduce the same mechanically.

Ninth. The Publisher agrees to advance to the Composer on account of royalties to be earned hereunder the sum of \$100 00/100 per week, payable on Saturday of each week during the term hereof, which sum shall be deducted from the first royalties accruing to the Composer hereunder.

Tenth. The Publisher agrees that it will deliver to the Composer, at the place of business of the Publisher, quarterly on the first days of January, April, July and October in each year, a statement showing all royalties or other sums due and owing to the Composer hereunder and within thirty days after the rendition of each of such statements, pay to the Composer any sum that such statement may show to be then due, first, however, deducting all sums advanced to the Composer by the Publisher as per paragraph "Ninth" hereof.

Eleventh. It is understood and agreed by and between the parties hereto, that the failure of the Publisher to render statements or make payments as they may respectively become due, shall not be deemed a breach of this contract so as to terminate the same, but that the Publisher may have sixty days after each and all of such statements become due and payments payable, within which to make the same.

Twelfth. The Composer agrees that during the term hereof, he will not conceive, create, compose or write any music for musical compositions for any person, firm or corporation, other than the Publisher; nor will he assist any person when the result of such assistance or collaboration is to be published or sold by any person, firm or corporation other than the Publisher; nor will he conceive, create or write music for any lyrics unless the publication rights to all such music and lyrics be vested exclusively in the Publisher; nor will he allow any lyrics to be composed or set to any music he shall have conceived, created or written, unless the publication rights to all such music and lyrics be vested exclusively in the Publisher; nor

will he write or collaborate in writing any musical play or other theatrical representation containing music, unless the publication rights of any and all such music and lyrics be vested exclusively in the Publisher; nor will he allow or permit his name to be used, printed or published upon or in connection with any song, musical composition or theatrical representation, as the composer, except as herein provided, and with the exception of those already published and copyrighted. And the Composer hereby represents that he is not now under contract to write music for publication purposes during the term covered by this agreement for any person, firm or corporation except the Publisher.

Thirteenth. It is agreed that the Composer is well, favorably and extensively known and that his compositions have been distinctive, and his services are extraordinary and unique and cannot be duplicated, and that in the event of the breach of the negative covenant contained in preceding paragraph (Twelfth) hereof, the Publisher will suffer irreparable damage and inestimable loss.

Fourteenth. The Composer agrees for himself, if living, and for his widow, children, executors and next of kin, if not living, to renew, pursuant to law, the copyrights of each and all of the numbers delivered to the Publisher and copyrighted by the Publisher hereunder, and to assign such renewals of copyright to the Publisher for continued publication pursuant to the provisions hereof.

Fifteenth. Nothing herein contained shall be construed to divest the Publisher at the termination of this agreement of the right to continue the publication and sale of the compositions and numbers acquired by it during the term hereof, but the same shall continue in full force and effect forever, and the royalties required to be paid to the Composer hereunder, shall continue after the expiration of this agreement, for the full term of the copyrights, providing the Composer on his part has fully performed all the terms and conditions hereof.

Sixteenth. The Composer hereby accords to the Publisher the right to renew this contract for a further term of two years upon all the terms and conditions hereof, provided the Publisher shall communicate its intention to renew this agreement in writing, by registered mail, addressed to the Composer at his last known post-office ad-

dress, at least thirty days before the expiration of this agreement.

[fol. 1543] Seventeenth. This agreement is binding upon the Composer and his personal representatives, and upon the Publisher, its successors and assigns.

In Witness Whereof, the Composer has hereunto set his hand and seal, and the Publisher has caused these presents to be signed by its President and its corporate seal to be hereunto affixed the day and year first above written.

George Gershwin (L. S.). Harms, Inc., by [Signature illegible], President.

[fol. 1544] PLAINTIFFS' TRIAL EXHIBIT 8

Agreement made this 21st day of January, 1933, by and between Cole Porter, of the City of New York, hereinafter designated "Composer", and Harms Inc., a New York corporation, hereinafter designated "Publisher", witnesseth:

For and in consideration of the sum of One Dollar and other good and valuable consideration by each of the parties to the other in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby mutually acknowledged, the parties hereto do promise and agree as follows:

Whereas the Composer is a composer of music and lyrics for musical compositions by profession; and

Whereas the Publisher is engaged in the business of publishing and selling sheet music, musical compositions, etc., and

Whereas the Publisher is desirous of acquiring from the Composer the sole, exclusive, absolute and unlimited right, license, privilege and authority in and for the civilized world to publish, copyright, print, reprint, copy and vend all the musical compositions composed by the Composer alone or in collaboration with others during the period hereinafter stated, and the Composer is agreeable thereto; Now, Therefore,

[fol. 1545] First. The Composer hereby gives and grants unto the Publisher the sole, exclusive, absolute and unlimited right, license, privilege and authority to publish, copyright, print, reprint, copy and vend (inclusive of me-

chanical and electrical reproducing rights) in and for the civilized world, during the terms of the respective copyrights thereof, all the musical compositions (words and music), whether separate numbers or scores of musical plays, in whole or in part conceived, created, composed and written by the Composer, alone or in collaboration with others, during the period of one (1) year from the 13th day of June, 1933, in addition to such music and musical compositions of which the Composer may acquire the ownership or control during said period.

Second. The Composer agrees to deliver to the Publisher at its place of business in the City of New York, as soon as the same shall have by him been composed, a full and complete manuscript of each and all of such music and musical compositions.

Third. The Composer hereby gives to the Publisher full permission and authority to publish, copyright (in its own name), print, reprint, copy and vend in the civilized world, the musical compositions of the Composer, and the Publisher may, in its discretion, adopt any name or title for any musical composition published hereunder.

Fourth. The Composer hereby reserves unto himself the [fol. 1546] sole and exclusive stage performing rights of all production numbers composed by him and the Composer hereby grants to the Publisher all other performing rights of such production numbers, and all performing rights of all other numbers composed by the Composer hereunder.

Fifth. The Publisher agrees that it will receive from the Composer any and all musical compositions (words and music) composed and written by him and delivered as herein provided, and will publish, copyright and place on sale them and each of them at such times and places as the Publisher may deem proper and to the best interests of the parties hereto.

Sixth. Nothing herein contained shall be construed to mean that it is mandatory upon the part of the Publisher to use and publish all the musical compositions composed by the Composer delivered to the Publisher hereunder, but that if any of such numbers shall remain unpublished for eighteen (18) months after the delivery thereof to the Publisher, then the numbers so remaining unpublished shall at

the expiration of said eighteen months be returned to the Composer.

Seventh. The Publisher agrees to pay to the Composer, and the Composer agrees to accept in full for royalty upon musical compositions (words and music) composed by the Composer, published and sold by and paid for to the Publisher under this agreement in the United States and Canada:

[fol. 1547] Production numbers, six (6¢) cents per copy to cover words and music, and popular numbers, three (3¢) cents per copy to cover words and music.

Eighth. The following are exempt from royalty: professional pianoforte copies, arrangements; copies known as "new issues"; copies circulated as complimentary or for advertising purposes.

Ninth. The Publisher agrees to pay to the Composer the following percentages of all net royalties or other net sums received by it from the use in the United States and Canada of the musical compositions delivered by the Composer to the Publisher hereunder upon parts of instruments serving to reproduce the same mechanically:

Production numbers, fifty (50%) per cent to cover words and music, and popular numbers, thirty-three and one-third ($33\frac{1}{3}\%$) per cent to cover words and music.

Tenth. When publication of the musical compositions delivered by the Composer to the Publisher hereunder is made outside of the United States and Canada, it is agreed that the Publisher shall pay to the Composer one-half of the foregoing American royalty rates, except that if any of such musical compositions shall be sold at less than the regular rate, the Publisher shall pay to the Composer fifty (50%) per cent of all royalties that the Publisher shall receive [fol. 1548] on sales of production numbers, and thirty-three and one-third ($33\frac{1}{3}\%$) per cent of all royalties that the Publisher shall receive on sales of popular numbers, all subject to deduction for foreign taxes.

Eleventh. It is expressly agreed that the world-wide motion picture synchronization rights of the music of the separate musical compositions (not of entire plays) composed by the Composer during the term of this agreement

shall be the sole and exclusive property of the Publisher or its designated licensees, and the Composer shall be entitled to the same percentage of receipts therefrom as in the case of mechanical royalties. "Synchronization rights" as herein used means the right to mechanically and/or electrically record and to reproduce, perform, use, represent and exhibit as a part of or in connection with motion pictures with sound accompaniment.

Twelfth. The Publisher agrees that it will deliver to the Composer at the place of business of the Publisher quarterly thirty days after the first day of February, May, August and November in each year, a statement showing all royalties or other sums due and owing to the Composer hereunder, and pay to the Composer any sum such statement may show to be then due.

Thirteenth. The Publisher hereby pays to the Composer [fol. 1549] receipt of which is hereby acknowledged, which shall be considered an advance and deducted from the first royalties accruing to the Composer from the Publisher.

Fourteenth. The Composer hereby represents that he is not now under contract to write music for publication purposes during the period hereinbefore mentioned, for any person, firm or corporation, and he agrees that he will not compose or write music or musical compositions, or assist or collaborate therein, for publication by any person, firm or corporation other than the Publisher.

Fifteenth. It is agreed that the Composer is well, favorably and extensively known and that his compositions have been distinctive, and his services are extraordinary and unique and cannot be duplicated, and that in the event of the breach of the negative covenant contained in the preceding paragraph hereof, the Publisher will suffer irreparable damage and inestimable loss.

Sixteenth. The Composer agrees for himself, if living, and for his widow, children, executors, administrators and next of kin, if not living, to renew, pursuant to law, the copyrights of each and all of the numbers composed and written by him and delivered to the Publisher, and copyrighted by the Publisher hereunder, and to assign such renewals of [fol. 1550] copyright to the Publisher for continued publication pursuant to the provisions hereof.

And the Composer hereby empowers the Publisher to renew, pursuant to law, for and in the name of the Composer, if living, the copyrights of each and all of the numbers published by the Publisher hereunder, and in his name to execute formal assignments to the Publisher of each and all of such renewal copyrights.

Seventeenth. This agreement is binding upon and shall inure to the benefit of the Composer and his personal representatives and the Publisher and its successors and assigns.

In Witness Whereof, the Composer has hereunto set his hand and seal, and the Publisher has caused these presents to be signed by its duly authorized officer the day and year first above written.

Cole Porter (L. S.) (Signature illegible.) Harms Inc., by Henry M. Spitzer.

[fol. 1551] PLAINTIFFS' TRIAL EXHIBIT 9-A

Agreement dated June 8, 1910 between Victor Herbert and M. Witmark & Sons, granting the latter exclusive license to publish and sell libretto and lyrics, piano and vocal score, of Herbert's musical play, "TRENTINI" in terms substantially similar to Exhibit 13.

PLAINTIFFS' TRIAL EXHIBIT 9-B

Agreement dated April 2, 1914 between Victor Herbert and M. Witmark & Sons, granting the latter exclusive license to publish and sell libretto and lyrics, piano and vocal score, of Herbert's musical play "THE ONLY GIRL", in terms substantially similar to Exhibit 13.

PLAINTIFFS' TRIAL EXHIBIT 9-C

Agreement dated September 6, 1898 between Victor Herbert and Witmark & Sons, granting the latter exclusive license to publish and sell libretto and lyrics, piano and vocal score, of Herbert's Comic Opera "THE FORTUNE TELLER", in terms substantially similar to Exhibit 13.

PLAINTIFFS' TRIAL EXHIBIT 10

Agreement dated August 9, 1905 between Victor Herbert and Witmark & Sons, granting the latter exclusive license to publish and sell libretto and lyrics, piano and vocal score of dramatic composition "M'LE MODISTE", in terms substantially similar to Exhibit 13.

PLAINTIFFS' TRIAL EXHIBIT 11

Agreement dated October 23, 1906, between Victor Herbert and M. Witmark & Sons, granting the latter exclusive [fol. 1552] license to publish and sell libretto and lyrics, piano and vocal score, of Herbert's musical play, "THE RED MILL" in terms substantially similar to Exhibit 13.

PLAINTIFFS' TRIAL EXHIBIT 12

Agreement dated March 27, 1903, between Victor Herbert and M. Witmark & Sons, granting the latter exclusive license to publish and sell libretto and lyrics, piano and vocal score of Herbert's musical play "BABES IN THE WOODS" in terms substantially similar to Exhibit 13.

[fol. 1553] PLAINTIFFS' TRIAL EXHIBIT 13

Agreement made this 16th day of —, 1919, between Victor Herbert of the Borough of Manhattan, City of New York, hereinafter designated as the Composer, and T. B. Harms & Francis, Day & Hunter, a New York corporation, hereinafter designated as the Publisher.

Whereas, the Composer has undertaken to compose all the music for the musical production at present entitled "LITTLE MISS WISE" (to be changed) which is to be produced during the season.

Whereas, the Publisher desires to acquire the exclusive license to print, publish and sell such music, or any part or parts thereof, or any arrangement or selection of or from the whole or any part thereof in the United States of America, and Canada,

Now, Therefore, in consideration of the mutual covenants in this agreement contained, it is agreed as follows:

I. The Composer grants to the Publisher the sole and exclusive license to print, reprint, publish and vend in the United States of America, and Canada, all the music that he shall compose for and that shall be introduced in the performance of — and any arrangement of or selection from the whole or any part thereof made under his supervision, during the terms of the copyrights thereof and of the renewals of such copyrights.

II. The Composer grants to the Publisher, subject to the terms hereof, the right to secure copyrights in such countries and renewals of copyrights in the said scores and in each and every part thereof, and in all arrangements or selections of the whole or any part thereof. The Publisher agrees, at its own cost and expense, to do all acts and take all proceedings necessary or expedient to the securing of such copyrights and renewals of the same, and all such copyrights so secured shall be held by the Publisher in trust for the Composer. The Publisher agrees at its own [fol. 1554] cost and expense, to do all acts and take all proceedings necessary or expedient to the securing of such copyrights and renewals of the same, and all such copyrights so secured shall be held by the Publisher in trust for the Composer. The Publisher agrees at its own cost and expense to take all necessary and proper steps for the purpose of protecting the said copyrights from infringements or otherwise. That all arrangements and selections of such scores and any part thereof shall be made under the supervision of the Composer, but at the cost and expense of the Publisher.

III. (a) The Publisher agrees to insert upon the title page of each copy published all the copyright notices required by the law of each country, and to insert on each such copy the name of Victor Herbert as sole composer of the music so published.

(b) The Publisher agrees that all publications containing any of the music of the Composer shall be devoted exclusively to the compositions of the Composer and shall contain neither the whole nor any part of the work of any other composer, nor shall any of the music of the Composer be joined with the music of any other Composer in any col-

lective or composite work. And the Publisher further agrees that the title page of any publication containing the music of the Composer shall contain the name of no other Composer save and except that of Victor Herbert.

IV. The Publisher agrees to pay to the Composer upon each and every copy sold the following royalties:

(a) Eight cents per copy for each pianoforte copy of each separate number.

(b) Twelve and one-half cents for and upon each and every copy of the piano score.

(c) Fifteen cents per copy for each vocal score.

(d) Fifteen cents upon each and every copy of any set [fol. 1555] lection for any instrument.

(e) An amount equal to fifteen per cent of the retail marked price thereof upon each band or orchestra arrangement and of any miscellaneous numbers or arrangements not otherwise herein provided for.

V. The Publisher further agrees:

(a) To pay regularly on or before the second Tuesdays of January and July in each year during the terms of the copyrights and of the renewals of copyrights in said scores, arrangements and selections, and so long thereafter as it shall continue to publish and sell said scores, or any part thereof, or any arrangement or selection thereof, the royalties earned from, because or on account of the publication and sale of said scores, arrangements and selections, or any part thereof, such payment to be made to the Composer at his residence, No. 321 West 108th Street, Borough of Manhattan, New York City.

(b) At the same time to account for all the copies of the whole or any part of said scores, selections and arrangements printed and sold by it, and to deliver to the Composer, or the duly authorized representative of the Composer, at No. 321 West 108th Street, Borough of Manhattan, New York City, a full, true and itemized statement showing in detail the number of copies of the whole or any part of said scores selections and arrangements printed and sold by it during the preceding six months, the number of such copies stamped with the autograph signature of

the Composer as hereinafter provided, the number of stamped and unstamped publications on hand, and the royalties due to the said Composer.

(c) The Publisher agrees not to distribute, sell offer or expose for sale any copy of the said scores, or of any part [fol. 1556] thereof, or of any arrangement or selection of the whole or any part thereof, without the signature of the said Composer conspicuously stamped or impressed upon the title page thereof, either by the Composer or by such other person as may be thereunto duly authorized by the Composer, and the Publisher agrees immediately after printing any copy of any such scores or of any parts, selections or arrangements thereof, to submit the same to the Composer for signature. The Composer agrees that at all reasonable times his representative will impress or stamp said signature on any such copy as frequently as the Publisher may reasonably require.

(d) The Publisher agrees that it will keep or shall cause to be kept true books of account in which full and complete entries shall be made of the number of copies of the scores and parts thereof, and of the selections and arrangements and parts thereof, printed and sold by the Publisher and its agents, and the said books shall at all reasonable times be open to the inspection of the Composer, or his agents or representatives with the privilege to make copies of the same; and the said Publisher agrees to keep all original orders for the printing of said scores, parts, selections and arrangements, and all original orders for shipment of said publications, and that said Composer and his representatives shall have the right to examine any and all books of account of said Publisher containing any item, memoranda or information relating to the said printing, shipment and sales of said publications, as well as the stock of said publications on hand, and all orders for the printing and shipment of said publications.

(e) The Publisher agrees that all orders for the printing of said publications shall be first submitted to the Composer, or some other person thereunto duly appointed by the Composer, [fol. 1557] who shall countersign the same, and no order for the printing of said publications shall be given unless the same is countersigned.

(f) The Publisher agrees that all the printing of said publications shall be done at and by one and the same printing house, located in New York City.

(g) The Publisher also agrees to secure from the printer and to deliver to the Composer every three months, in the first weeks of December, March, June and September in each year, a full true and itemized statement signed by the printer in his own hand, showing the number of copies of each of the publications above mentioned printed and delivered by him during the preceding three months.

(h) It is expressly agreed that the Composer shall be entitled to the payment of the said royalties in full, free from any charge or deduction whatsoever; the Publisher hereby agrees to arrange with the Author of the lyrics of said production for his compensation, and the Publisher hereby assumes the payment of all compensation and royalties that the author of the lyrics may be entitled to from or because of the publication and sale of the said music and lyrics.

VI. The Publisher agrees immediately after the publication of the score of said production and parts thereof, to deliver to the Composer free of cost two complete copies thereof.

VII. Nothing herein contained shall be construed as granting to the Publisher the right to represent or perform the music, musical numbers, settings and orchestrations, or any part thereof, or any selection or arrangement thereof, or as granting to it the right to make parts of instruments serving to reproduce mechanically such music, musical numbers, settings and orchestrations, or any part, arrangement or selection thereof, nor as granting to it any rights in such [fol. 1558] music, except the right to copyright and renew copyrights in the same in trust for the Composer, and to print, reprint, publish and vend the same in sheet music form only in accordance with the terms of this agreement.

The Composer agrees to pay to the Publisher as agent for — — — fifty per cent of all moneys which he shall actually collect on account of the reproduction on phonograph records of any number containing any lyrics written by —

VIII. The Publisher agrees not to assign or make any other disposition of this contract, or any right, title or

interest therein, nor to grant any right, title or interest therein or in said scores or any part thereof, or in any selection or arrangement thereof, to any person, firm or corporation without the written consent of the said Composer first had and obtained.

The grant of said rights being personal to the Publisher, the said rights shall not be transferrable by operation of law or legal proceedings.

IX. The rights of the Publisher under this agreement are dependent upon the due performance by it of each of the terms and covenants herein contained, all of which are hereby agreed upon as being of the essence of this contract, and in case of the Publisher's default in the due performance of any of the terms and covenants on its part to be performed, the Composer may at his election mail a notice addressed to the Publisher, whose office for the purpose of this agreement is fixed at 62-64 West 45th Street, New York City, specifying the nature of the default complained of, and in case said default shall not be rectified in five days, this agreement shall forthwith terminate and all rights hereby granted to the Publisher shall thereupon cease and come to an end, but without prejudice to any right or rights to compensation or damages or to any cause of action which the [fol. 1559] Composer may or might have in respect to any breach of this agreement.

It is agreed that if the Publisher shall be adjudicated a bankrupt in proceedings instituted by or against it, or take advantage of the insolvency laws of any State, Territory or Country, or should its property be advertised for sale in pursuance of any judicial, statutory or summary proceedings, or a Receiver of its property be appointed, or in the event of the voluntary or involuntary dissolution of the Publisher, then and in any of such events this contract shall end and all rights granted thereunder to the Publisher shall revert to the said Composer, and he shall be at liberty to make such disposition of the publishing rights of such music, musical settings, numbers, orchestrations, etc., as he may desire, and any and all payments theretofore made to him shall be retained by and belong to him absolutely, and in any such case or in the case of the termination of this agreement because of the Publisher's breach of any covenant, the said Publisher agrees that it and its legal representatives will immediately assign to said Composer in due form any

and all copyrights and renewals thereof which said Publisher may have secured in pursuance of this contract, and to return and deliver to the Composer all manuscripts belonging to the said Composer, and all copies of all scores of said production and all parts thereof and of all arrangements and selections and parts thereof in its possession or under its control.

In Witness Whereof, the Composer has hereunto set his hand and seal and the Publisher has caused this agreement to be subscribed and its corporate seal to be affixed hereto the day and year first above written.

In the presence of:

T. B. Harms & Francis, Day & Hunter, by Louis Dreyfus, Treasurer; Victor Herbert.

[fol. 1560]

PLAINTIFFS' TRIAL EXHIBIT 14

Schedule I

Acknowledgements from the Copyright Office of the Receipt of Two Copies of the Following Compositions from "The Red Mill"

- | | | | |
|----|-----|---|--|
| 1 | | Dramatic Composition | |
| | | (Because You're You | |
| | | " " " " " Arr. for Trombone Solo | |
| | | " " " " " " Cornet Solo | |
| 7 | (6) | " " " " " " Mandolin Orch. | |
| | | " " " " " " Guitar Solo | |
| | | " " " " " " Hotel Orch. | |
| 8 | | Entrance (Governor and Chorus) | |
| 9 | | Every Day Is Ladies Day With Me | |
| 10 | | Good-A-Bye John | |
| 11 | | Go While The Goin' Is Good | |
| 12 | | The Red Mill Fantasia | |
| 13 | | Finale 11 | |
| 15 | (2) | (If You Love But Me | |
| | | " " " " " " Arr. for Orchestra | |
| 16 | | I'll Ring the Bell | |
| 17 | | I'm Always Doing Something I Don't Want To Do | |
| | | (In the Isle of Our Dreams | |
| 21 | (4) | " " " " " " Arr. for Hotel Orch. | |
| | | " " " " " " " " Cornet Solo | |
| | | " " " " " " " " Trombone Solo | |
| 23 | (2) | (The Legend of the Mill | |
| | | " " " " " " Arr. for Hotel Orch. | |
| 25 | (2) | (Mignonette | |
| | | " " " " " " Arr. for Hotel Orch. | |
| 26 | | Moonbeams | |
| 27 | | Opening Chorus Act 1 | |
| 29 | (2) | (The Streets of New York | |
| | | " " " " " " Arr. for Hotel Orch. | |
| 30 | | When You're Pretty the World is Fair | |
| 32 | (2) | (Whistle It | |
| | | " " " " " " Arr. for Hotel Orch. | |
| 33 | | A Widow Has Ways | |
| 34 | | You Never Can Tell About A Woman | |
| 35 | | The Red Mill Vocal Score | |

- 37 (2) { Lancers
 39 (2) { March and Two Step Arr. for Band
 40 " " " " Orchestra
 43 (3) { Schottische Arr. for Orchestra
 " { Selection " " Band
 46 (3) { Waltzes Arr. for Mandolin Orch.
 " " " " Orchestra

46. Copyrights

[fol. 1561]

Certificates of Publication Covering the Following Arrangements of "Moonbeams" from "The Red Mill"

- 11 Arrangements Mixed Voices
 Vocal Orchestra
 Male Voices
 Duet in D
 Female Voices
 Two Part Song
 Three Part Song
 S. A. B.
 Cello and Piano
 Violin Cello and Piano
 Violin and Piano

Renewal Certificates Covering the Following Compositions from "The Red Mill"

- 1 Dramatic Composition
 2 Because You're You
 3 Act 1 Opening Chorus
 4 " 2
 5 Ensemble
 6 Entrance Song and Chorus
 7 Everyday Is Ladies Day With Me
 8 Good A Bye John
 9 Go While The Going Is Good
 10 Finale 1
 11 " 2
 12 If You Love But Me
 13 I'll Ring the Bell
 14 Renewals In The Isle of Our Dreams
 15 I'm Always Doing Something I Don't Want To Do
 16 Lancers
 17 The Legend of The Mill
 18 Mignonette
 19 Moonbeams
 20 Overture
 21 Selection
 22 The Streets of New York
 23 Teach Them What To Say
 24 Whistle It
 25 Vocal Score
 26 When You're Pretty and the World Is Fair
 27 A Widow Has Ways
 28 You Never Can Tell About A Woman
 11 Arrangements on Moonbeams
 28 Renewals
 46 Copyrights (originals)

85 Separate copyrights and renewals

Schedule II

Certificates of Publication Covering the Following Numbers from "Naughty Marietta"

1		Dramatic Composition (Ah Sweet Mystery of Life	
		" " " " " " Arr. for Violin, Cello & Piano	
		" " " " " " " " Dance Orch.	
		" " " " " " " " Piano	
		" " " " " " " " Violin Piano	
		" " " " " " " " Duet In D	
		" " " " " " " " " " B Flat	
17	(16)	" " " " " " " " Three Part Song	
		" " " " " " " " Mixed Voices	
		" " " " " " " " Male Voices	
		" " " " " " " " Two Part Song	
		" " " " " " " " Male Voices	
		" " " " " " " " Vocal Orch. —	
		" " " " " " " " Female Voices	
		" " " " " " " " S. A. B.	
		" " " " " " " " Cello & Piano	
18		All I Crave Is More of Life	
19		Barn Dance Schottische	
20		Dance of the Marionettes	
		(The Dream Melody	
23	(3)	(The Dream Melody Arr. for Orchestra	
		(The Dream Melody " " Band	
24		If I Were Anybody Else but Me	
		(I'm falling in Love with Someone	
28	(4)	" " " " " " " " Arr. for Mixed Voices	
		" " " " " " " " Hotel Orch.	
		" " " " " " " " Mandolin Orch.	
		(Italian Street Song	
		" " " " " " " " Arr. for Hotel Orch.	
		" " " " " " " " Duet in F	
		" " " " " " " " Soprano Solo	
37	(9)	" " " " " " " " Mixed Chorus	
		" " " " " " " " Three Pt. Song	
		" " " " " " " " S. A. B.	
		" " " " " " " " Two Pt. Song	
		" " " " " " " " Voc. Orch.	
38		It Never Never Can Be Love	
40	(2)	(It's Pretty Soft for Simon	
		" " " " " " " " Arr. for Hotel Orch.	
41		Lancers	
42		Live for Today	
43		Mister Voodoo	
45	(2)	(Naughty Marietta	
		" " " " " " " " Hotel Orch.	
46		Neath the Southern Moon	
47		New Orleans Jeunesse	
		(Selection	
51	(4)	" " " " " " " " Mandolin Orch.	
		" " " " " " " " Band	
		" " " " " " " " Orchestra	
52		The Sweet By and By	
54	(2)	(Tramp Tramp Tramp	
		" " " " " " " " T. T. B. B.	
[fol. 1563]		Certificates of Publication Covering the Following Numbers from	
		"Naughty Marietta"	
56	(2)	(Waltzes	
		" " " " " " " " Arr. for Orchestra	
57		We've Hunted the Wolf in the Forest	
58		You Marry a Marionette	
58		Copyrights	

[fol. 1564]

PLAINTIFFS' TRIAL EXHIBIT 16

Schedule III

M'lle. Modiste

Music—Victor Herbert

Book—Henry Blossom, Jr.

Partial List of Original Copyrights—in name of:

(M. Witmark & Sons, New York, as trustees for Victor Herbert
and

(Henry Blossom, Jr.

1 Book—Copyrighted October 6, 1905—Entry D 7367

2 Vocal Score—Copyrighted October 30, 1905—Entry C 105903

Individual Numbers

"If I Were on the Stage" (Note: original title of "Kiss Me Again")

3 Song—Copyrighted October 13, 1905—Entry C 104750

4 Arrangement for Hotel Orchestra—Copyrighted November 3,
1905, Entry C 1064715 Arrangement for Mandolin Orchestra by T. P. & Geo. J. Trinkaus
Copyrighted December 21, 1906—Entry C 137558

6 "In Dreams So Fair"

Song—Copyrighted January 25, 1906—Entry C 112826

"Kiss Me Again" (part of "If I were on the Stage")

7 Copyrighted: April 16, 1915—Entry E 358936—song

8 June 7, 1915—Entry E 364261—Vocal Orch.
Arrg.

9 April 20, 1916 —Entry E 388379

10 Oct. 18, 1916 —Entry E 398837

11 April 12, 1918 —Entry E 424236—Band Arrange-
ment12 May 10, 1918 —Entry E 427376—Arrg. by Otto
Langey

13 August 20, 1921—Entry E 533584

14 August 11, 1928—Entry E 699618

15 Dec. 7, 1931 —Entry E 523779)—Arrg. for violin
16 E 523781)—and piano

"I Want What I Want When I Want It"

17 Copyrighted: October 4, 1905—Entry C 104028

18 January 20, 1906—Entry C 112488

19 May 5, 1906 —Entry C 120630

"Chorus of Footmen"

20 Song Copyrighted October 13, 1905—Entry C 104751

21 Piano Arrangement Copyrighted October 13, 1905—Entry C 104752

"Dear Little Girl Who is Good"

22 Copyrighted September 29, 1905—Entry C 103563

[fol. 1565]

"Hats Make the Woman"

23 Copyright September 29, 1905—Entry C 103564

"I'm Always Misunderstood"

24 Copyright October 7, 1905—Entry C 104282

"I Should Think You Could Guess"

25 Copyright October 7, 1905—Entry C 104283

"Mascot of the Troop"

26 Song—Copyright October 7, 1905—Entry C 104281

27 March—Copyright July 2, 1906—Entry C 134697

28 Two Step for Piano—Arrg. by Karl L. Hoschner

Copyright January 20, 1906—Entry C 112489

29 Arrg. for Hotel Orchestra

Copyright October 27, 1905—Entry C 105784

30 March & Two Step Arrg. for Orchestra

Copyright February 21, 1906—Entry C 114739

"Keokuk Culture Club"

31 Song—Copyright October 16, 1905—Entry C 105025

"The Time, The Place, and The Girl"

32 Song—Copyright October 12, 1905—Entry C 104690

PLAINTIFFS' TRIAL EXHIBIT 16—Continued

- 33 Arrg. for Hotel Orch.
Copyright November 3, 1905—Entry C 106470
- 34 Arrg. by Trinkaus for Mandolin Orch.
Copyright February 9, 1906—Entry C 113860
"The Nightingale and The Star"
- 35 Copyright October 14, 1905—Entry C 104803
"When The Cat's Away the Mice Will Play"
- 36 Song—Copyright October 16, 1905—Entry C 105026
- 37 Arrg. by George Trinkaus for Mandolin Orch.
Copyright December 20, 1924—Entry C 606021
"Ze English Language"
- 38 Song—Copyright October 12, 1905—Entry C 104691
"Love Me, Love My Dog"
- 39 Song—Copyright September 25, 1905—Entry C 103305
Opening Chorus—Act I
- 40 Copyright October 23, 1905—Entry C 105504
[fol. 1566] Finale Act I
- 41 Copyright November 3, 1905—Entry C 106468
Opening Chorus—Act II
- 42 Copyright October 20, 1905—Entry C 105311
Entr Acte
- 43 Piano—Copyright December 29, 1905—Entry C 105023
- 44 Arrg. for Orch. by H. L. Rogers—Copyright January 29, 1906
Entry C 113103
- Ballet
- 45 Piano—Copyright October 16, 1905—Entry C 105023
- Selections
- 46 Piano Arrg. Copyright October 30, 1905—Entry C 105902
- 47 Orch. arrg. by Otto Langey Copyright January 15, 1906
Entry C 112206
- Miscellaneous
- 48 Fantasia Arrangement by Tom Clark for piano and trombone
Copyright August 24, 1907—Entry C 160407
- 49 ditto for piano and coronet
Copyright August 24, 1907—Entry C 160408
- 50 Waltz Arrangement for Orchestra by Otto Langey
Copyright March 3, 1906—Entry C 115495
- 51 ditto for piano by Karl J. Hoschner
Copyright February 21, 1906, Entry C 114732
- 52 March and Two Step
Arrangement for Orchestra by Otto Langey
Copyright February 21, 1906—Entry C 114738
- 53 Lancers Arrangement for Orchestra by Otto Langey
Copyright January 29, 1906—Entry C 113104

[fol. 1567]

PLAINTIFFS' TRIAL EXHIBIT 17-A

Renewals of Copyrights

M'lle. Modiste

- 1 Book—Renewed in name of Marjorie Wilson, widow of author; November 5, 1932—Entry R 22194 (7367)
Following Renewed in name of Ella Herbert Bartlett, Clifford Herbert, and Marjorie Wilson:
- Vocal Score
- 2 December 2, 1932—Entry R 22367 (105903)
"If I Were on The Stage" ("Kiss Me Again")
- 3 Song December 2, 1932—Entry R 22366 (104750)
- 4 Hotel Orch. Arrg. December 10, 1932—Entry R 22495 (106471)
"I Want What I Want When I Want It"
- 5 November 5, 1932—Entry R 22026 (104028)
"Chorus of Footmen"
- 6 Song December 2, 1932—Entry R 22368 (104751)

- 7 Piano Arrg. December 2, 1932—Entry R 22369 (104752)
- 8 "Dear Little Girl Who is Good"
November 5, 1932—Entry 22024 (103563)
- 9 "Hats Make the Woman"
November 5, 1932—Entry R 22025 (103564)
- 10 "I'm Always Misunderstood"
November 5, 1932—Entry R 22022 (104282)
- 11 "I Should Think that you Could Guess"
November 5, 1932—Entry R 22023 (104283)
- 12 "Mascot of the Troop"
Song—November 5, 1932—Entry R 22021 (104281)
- 13 "Keokuk Culture Club"
Song—December 2, 1932—Entry R 22387 (105025)
- 14 "The Time, The Place and The Girl"
Song—December 2, 1932—Entry R—22363 (104690)
- 15 Hotel Orch. Arr. December 10, 1932—Entry R 22494 (106470)
- [fol. 1568]
- 16 "The Nightingale and The Star"
December 2, 1932—Entry R 22375 (104803)
- 17 "When The Cat's Away"
December 2, 1932—Entry R 22388 (105026)
- 18 "Ze English Language"
December 2, 1932—Entry R 22364 (104691)
- 19 "Love Me Love My Dog"
October 5, 1932—Entry R 21656 (103305)
- 20 Opening Chorus—Act I
December 2, 1932—Entry R 22402 (105504)
- 21 Finale—Act I.
December 9, 1932,—Entry R 22493 (106468)
- 22 Opening Chorus—Act II.
December 2, 1932—Entry R 22395 (105311)
- 23 Entr Act
Piano—January 3, 1933—Entry R 33851 (111033)
- 24 Ballet
Piano—December 2, 1932—Entry R 22386 (105023)
- 25 Selections
Piano—December 2, 1932—Entry R 22413 (105902)

[fol. 1569]

PLAINTIFFS' TRIAL EXHIBIT 17-B

Schedule IV

Red Mill

Original Copyrights issued to M. Witmark & Sons—as trustees for Victor Herbert & Henry Blossom, Jr. Renewals issued to Ella H. Bartlett, Clifford Herbert and Marjorie Wilson.

		Original		Renewals	
		Date	Entry No.	Date	Entry No.
1	Book	Aug. 27, 1906	D-8998	Jan. 29, 1934	R-29233
2	Vocal Score	Sept. 27, 1906	C-130652	Jan. 6, 1934	R-29441
	Individual Numbers				
3	Overture—Piano Score.	Sept. 24, 1906	C-130367	Jan. 6, 1934	R-28420
4	Opening Chorus—Act I.	July 25, 1906	C-126164	Aug. 25, 1933	R-26740
5	Entrance Song and Chorus	Aug. 22, 1906	C-127973	Aug. 25, 1933	R-26766
6	Finale I.	Aug. 6, 1906	C-126953	Aug. 25, 1933	R-26749
7	Opening Chorus—Act II	Aug. 6, 1906	C-126954	Aug. 25, 1933	R-26750
8	Ensemble	Aug. 10, 1906	C-127259	Aug. 25, 1933	R-26756
9	Finale II.	Sept. 24, 1906	C-130368	Jan. 6, 1934	R-28425
10	Because You're You.	Sept. 7, 1906	C-128045	Sept. 21, 1933	R-27086
11	Every Day Is Ladies Day	Sept. 7, 1906	C-129046	Sept. 21, 1933	R-27087
12	Good-a-bye, John	Sept. 24, 1906	C-130414	Jan. 6, 1934	R-28433
13	So While the Going is Good	Aug. 22, 1906	C-127974	Aug. 25, 1933	R-26767
14	If You Love But Me	Mar. 30, 1907	C-147028	Apr. 3, 1934	R-30899
15	I'll Ring the Bell	Sept. 24, 1906	C-130415	Jan. 6, 1934	R-28434
16	I'm Always Doing Something	Aug. 22, 1906	C-127975	Aug. 25, 1933	R-26768
17	In the Isle of Our Dreams	Aug. 22, 1906	C-127977	Aug. 25, 1933	R-26770
18	Legend of the Mill	Aug. 6, 1906	C-126956	Aug. 25, 1933	R-26752
19	Mignonette	July 19, 1906	C-125813	Aug. 25, 1933	R-26734
20	Moonbeams	Oct. 6, 1906	C-131451	Jan. 6, 1934	R-28455
21	Streets of New York	Aug. 22, 1906	C-127976	Aug. 25, 1933	R-26769
22	Teach Them What To Say	Aug. 10, 1906	C-127258	Aug. 25, 1933	R-26755
23	When You're Pretty and the World is Fal-	Jan. 24, 1907	C-140923	Jan. 29, 1934	R-29202
24	Whistle It	Aug. 6, 1906	C-126955	Aug. 25, 1933	R-26751
25	A Widow Has Ways	July 19, 1906	C-125812	Aug. 25, 1933	R-26733
26	You Never Can Tell About A Woman	July 19, 1906	C-125811	Aug. 25, 1933	R-26732
27	Because You're You—Arrg't for Guitar by T. P. & Geo. J. Trinkaus	Mar. 5, 1907	C-144656		

28	In The Isle of Our Dreams—Arrg't for Mandolin Orch. by Trinkaus.....	Feb. 2, 1907	C-142116		
29	Selections—Arrg'd for Military Band by Herbert L. Clarke	Mar. 4, 1907	C-144584		
30	March and Two Step—Arrg'd for Band by Herbert L. Clarke.....	Mar. 4, 1907	C-144585		
31	March and Two Step—Arranged for Orchestra by Otto Langey.....	Dec. 31, 1906	C-139003		
32	Waltzes—Arrg'd for Mandolin Orch. by Trinkaus.....	May 1, 1907	C-150181		
33	Schottische—Arrg'd for Orchestra by Otto Langey.....	Dec. 31, 1906	C-139002		
[fol. 1570]	Lancers—Arrg'd by Otto Langey Orchestra Parts only.....	Oct. 29, 1906	C-133348		
34	Because You're—You—Arrg'd for Mandolin Orch. by Trinkaus.....	Dec. 13, 1906	C-136836		
35	Selections—Arrg'd for Orchestra by Otto Langey.....	Nov. 17, 1906	C-134786		
36	Waltzes—Arrg'd for Orchestra by Otto Langey.....	Dec. 7, 1906	C-136302		
37	If You Love But Me—Arrg'd for Orchestra by W. C. O'Hare.....	June 4, 1907	C-153842		
38	Fantasia—Arrg. for Piano and Trombone by Tom Clark.....	Aug. 24, 1907	C-16404		
39	Fantasia—Arrg. for Piano and Cornet by Tom Clark.....	Aug. 24, 1907	C-16405		
40	In the Isle of Our Dreams—Song with Guitar Accom. arr. by Trinkaus.....	Mar. 8, 1907	C-146181		
41	Selections—Arrg. for Mandolin Orch. by Trinkaus.....	Apr. 3, 1907	C-146606		
42	Waltzes—Arrg. for Military Band by Herbert L. Clarke.....	Jan. 23, 1908	C-147325		
43	Lancers—Arrg. for Piano by Karl L. Hoschna.....		C-172634		
44	Selections—Arrg. by Karl L. Hoschna.....				
					Apr. 11, 1935
					1934
					R-37148
					R-28472
					27
					28

44 Original Copyrights

28 Renewals

72 Copyrights Total

[fol. 1571]

PLAINTIFFS' TRIAL EXHIBIT 18

Schedule V

Babes in Toyland

Original Copyrights issued to M. Witmark & Sons—as trustees for Victor Herbert & Glen MacDonough. Renewals issued to Ella H. Bartlett, Clifford Herbert and Alan MacDonough.

		Original		Renewals	
		Date	Entry No.	Date	Entry No.
1	Book.....	June 15, 1903	D-3587	June 26, 1930	9435
2	Vocal Score.....	Aug. 22, 1903	C-53514	Aug. 22, 1930	R-9900
3	Individual Numbers				
4	March of the Toys—Piano Score.....	June 25, 1903	C-50193	July 25, 1930	R-9794
5	Babes in Toyland Waltzes.....	Aug. 11, 1903	C-52908	Sept. 3, 1930	R-9990
6	Arr'g't for Piano by Karl Hoschna				
7	Selections—Piano Arr'g't by K. Hoschna.....	Aug. 13, 1903	C-53048	Sept. 3, 1930	R-9901
8	March and Two Step.....	Aug. 27, 1903	C-53819	Sept. 3, 1930	R-10028
9	Arr. for Piano by Hilding Anderson				
10	Toyland.....	May 14, 1903	C-47877	July 25, 1930	R-9793
11	Opening Act 3—Chorus.....	Sept. 23, 1903	C-55185	Sept. 24, 1930	R-10300
12	Opening Act 2—.....	Aug. 13, 1903	C-53068	Sept. 3, 1930	R-9992
13	Barney O'Flynn.....	July 1, 1903	C-50620	July 25, 1930	R-9790
	Beatrice Barfacts.....	May 28, 1904	C-71675	June 3, 1931	R-14757
	Before and After.....	May 11, 1903	C-47607	July 25, 1930	R-9792
	Birth of the Butterfly—Finale Act I.....	Aug. 19, 1903	C-53345	Sept. 3, 1930	R-10023

14	Country Dance.....	Aug. 13, 1903	C-53067	Sept. 3, 1930	R-10021	14
15	Contrary Mary.....	May 11, 1903	C-47608	Sept. 3, 1930	R-9989	15
16	Floretta.....	June 5, 1903	C-49100	July 25, 1930	R-9796	16
17	Go to Sleep, Slumber Deep.....	July 22, 1903	C-51815	Sept. 3, 1930	R-9798	17
18	Gavotte (Eccentric Dance).....	Aug. 19, 1903	C-53344	Sept. 3, 1930	R-10024	18
19	He Won't Be Happy Till He Gets It (Words by Chas. N. Douglas).....	Jan. 11, 1904	C-62674	Jan. 14, 1931	R-12327	19
20	I Can't Do That Sum.....	Oct. 31, 1903	C-57876	Nov. 1, 1930	R-11039	20
21	In the Toymakers Workshop.....	Oct. 7, 1903	C-56203	Nov. 19, 1930	R-11431	21
22	Jane.....	June 17, 1903	C-49789	July 25, 1930	R-9795	22
23	John Johnson.....	May 14, 1903	C-47876	Sept. 3, 1930	R-9988	23
24	Legend.....	Aug. 22, 1903	C-53511	Sept. 3, 1930	R-10027	24
25	Mignonette.....	Aug. 19, 1903	C-53342	Sept. 3, 1930	R-10022	25
26	Military Ball.....	July 1, 1903	C-50619	July 25, 1930	R-9791	26
27	The Moon Will Help You Out.....	July 8, 1903	C-51047	July 25, 1930	R-9799	27
28	Never Mind Bo Peep.....	Aug. 19, 1903	C-53343	Sept. 3, 1930	R-10025	28
29	Our Castle in Spain.....	Dec. 7, 1903	C-60317	Dec. 10, 1930	R-11786	29
30	Song of the Poet.....	Aug. 22, 1903	C-53509	Sept. 3, 1930	R-10026	30
31	With Downcast Eye Renewals.....	May 28, 1903	C-48604	July 25, 1930	R-9707	31
32	I Can't Do That Sum—Polka Two Step Arr. by Karl. Hoschna.....	June 11, 1904	C-72377			
32	Original Copyrights					
31	Renewals					
63	Copyrights Total					

[fol. 1572]

PLAINTIFFS' TRIAL EXHIBIT 19

Contains a list of the 135 copyrighted compositions of Ethelbert Nevin, the deceased husband of plaintiff Anne Paul Nevin, such works having been copyrighted between 1874 and 1913, the compositions subsequent to 1901 being posthumous works. Among such compositions are "The Rosary," (1898) and "Mighty Like a Rose" (posthumous, 1901).

PLAINTIFFS' TRIAL EXHIBIT 19

This exhibit contains a list of approximately 280 copyrighted compositions, of which the music was written by Ethelbert Nevin. Such compositions were copyrighted at various dates between 1874 and 1922. Specimen compositions, giving the collaborator, the publisher, the date of copyright, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Renewed	Remarks
Barcarolle.....	Arr.-T. W. Surette.....	Boston Music Co.....	1/24/1893	12/23/20-Boston Music Co.	
Evening Song.....	.....	Boston Music Co.....	3/ 9/1893	12/23/20-Boston Music Co.	
March of the Pilgrims.....	.....	John Church Co.....	1898	2/18/29-John Church Co.	
Mighty Lak A Rose.....	Frank Stanton.....	John Church Co.....	9/ 6/01	6/13/29-John Church Co.	
My Love's Waiting.....	Richard Hovey.....	Boston Music Co.....	1898	11/27/25-Boston Mus. Co.	June Night in Washington
Rosary.....	Robert Cameron Rogers.....	.....	1898	9/1/25-Boston Music Co.	
Slumber Song (Dream of Blest Repose)	Edward Teschemacher.....	Boston Music Co.....	12/ 1/09	3/20/37-Boston Music Co.	
Stars of the Summer Night.....	Henry W. Longfellow.....	Oliver Dit-Son Co.....	10/14/'87	3/8/15-Oliver Ditson Co.	
Valse Caprice.....	.....	Boston Music Co.....	4/16/1890	11/16/17-Boston Music Co.	Op. 6 Three Duets for Piano
Water Nymph.....	.....	Boston Music Co.....	5/28/1891	12/20/18-Boston Music Co.	

[fol. 1573] DEFENDANTS' TRIAL EXHIBIT A-1

Compilation made by William Burton Richardson purporting to show the number of musical compositions copyrighted from July 1, 1909 to November 27, 1939 by publishers mentioned in ASCAP stickers (Plaintiffs' Trial Exhibit 1) other than those who are members of ASCAP, SESAC or Associated Music Publishers, as follows:

1. Total number of compositions registered for copyright by such publishers is 43,139.
2. Total number of music publishers listed is 2,644.
3. According to the compilation, 82 publishers who have registered more than 100 compositions each for copyright, have a total of 26,292 copyright entries;
4. The total number of published musical compositions registered for copyright by such publishers is 24,927;
5. The total number of arrangements of musical compositions registered for copyright by such publishers is 11,631;
6. The total number of unpublished manuscripts registered for copyright by such publishers is 6,581.
7. The witnesses' notes on the tabulation in the form as appearing on the title page and sample page 1, a photostat copy of which is appended below, shows the following tabulations of the witnesses (numbers on the left below correspond with classification numbers appearing on appended title page of Defendants' Exhibit A-1):

Classification	Number of Copyright Entries
1	5,236
1 & 3	104
1 & 4	406
1 & 6	62
1 & G	482
1 & 2 & 4	44
[fol. 1574]	
2	82
2 & 3	19
2 & 4	1,692
2 & G	104

Classification	Number of Copyright Entries
2 & 3 & 4	17
2 & 4 & 5	42
2 & 4 & 6	45
3	779
3 & 4	1,695
3 & 5	283
3 & 6	74
3 & G	672
3 & 4 & 5	57
3 & 5 & G	219
4	5,414
4 & 5	149
4 & 6	88
4 & G	697
5	44
6	848
G	15,903
Works specially arranged for musical instruments in addition to those appearing in Class "3"	1,179
Foreign titles	1,059
Miscellaneous	707
Exercises for music students	196
There is no notation by the witness as to the nature of works	4,741
	<hr/> 43,139

8. Plaintiffs reserve all of their objections taken at the trial to this entire exhibit and each and every part thereof.

(Here follow 2 photolithographs, side folios 1575-1576)

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CLASSIFICATION OF MUSICAL PYRIGHTS AS DESIGNATED BY THE
UNITED STATES COPYRIGHT FICE, LIBRARY OF CONGRESS,
WASHINGTON, D. C.

-
- E Published Compositions Reproduced f Sale or Distribution to the Public and Placed
on Sale, Sold or Publicly Distrited.
- E-1 Published musical copyright arrangents on old copyrighted material either E material,
E-2 material or public domain marial.
- E-2 Unpublished manuscripts.
-

Figures in Ink Next to Totals Designate assification by General Type of Music, as
Follows:

- 1 Religious and Spiritual.
2 Dance Music.
3 Instrumental Variations and Fugues.
4 Ballads - Railroad and Sentimental.
5 Spring and Nature Music
6 Marches and Patriotic
- G General, including all types above.
-

NAME AND ADDRESS	JULY 1, 1909, to JUNE 30, 1927			JULY 1, 1927 to NOVEMBER 5, 1937			NOVEMBER 7, 1937 to (Current)			TOTAL
	E	E-1	E-2	E	E-1	E-2	E	E-1	E-2	
A & B Music Co., New York, N. Y.	0	0		5	0	0	0	0	0	5
A. G. Publishing Co., Haskill, Okla.	0	0		0	0	0	0	0	0	0
Abby Music Co., Indianapolis, Ind.	0	0		0	0	0	0	0	0	0
Abingdon Press, 150 Fifth Avenue, New York, N. Y.	0	0		0	0	0	0	0	0	0
Academic Co., 381 Fourth Avenue, New York, N. Y.	0	0		0	0	0	2	0	0	2 Renewal by H. Feist Co.
Ace Music Pub., Inc., 145 West 45th St., New York, N. Y.	0	0		2	0	3	0	0	0	5
Ackley, B., 1018 Arch Street, Philadelphia, Pa.	211*	23*	*	11	0	0	12	0	0	257* Religious Music
Ackley, B. D., Hotel Markeen, Buffalo, N. Y.	0	0		0	0	0	0	0	0	0
Acosta, Dionisio, P. O. Box 1121, Los Angeles, Calif.	0	0	2	588	0	15	0	0	0	625 Foreign Italian
Adams Music Co., Passaic, New Jersey	0	1		0	0	0	0	0	0	1
Adams Music Pub. Co., 745 Seventh Avenue New York, N. Y.	0	0		5	0	3	0	0	0	8 G
Adams, Pub., Joseph, #15 Cannon Passage, Birmingham, Ala.	0	0		0	0	0	0	0	0	0 This is Birmingham ham, England, Pub. - Has approx 32 E's.
Adams, J. O. Music Pub., Wichita, Kansas	0	0		0	0	0	0	0	0	0
Adams, Vee & Abbott, Inc., 218 So. Wabash Ave., Chicago, Illinois	0	0		10	1	5	0	0	0	16 3+4
Adams, Willard G., 185 Main Street, White Plains, N. Y.	4	0		0	0	0	0	0	0	4
Adelphia Music House, 1317 Arch Street, Philadelphia, Pa.	2	0		0	0	0	0	0	0	2
Adirondack Songs, Inc. Gloversville, N. Y.	0	0		0	0	0	0	0	0	0
Advance Publications, Chicago, Illinois	0	0		1	0	0	0	0	0	1

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B-1

Information as required by Section 2 (a), New Florida Law, Exhibit M, Page 15, Further Supplemental Bill of Complaint filed in United States District Court, Northern District of Florida, Gainesville Division, by Messrs. Frank J. Wideman and Manley P. Caldwell, 1400 Harvey Building, West Palm Beach, Florida.

Gene Buck, et al. v. George Couper Gibbs, et al.

Sample Publisher: Broadway Music Corp., Will Von Tilzer, 519 Broadway, New York, N. Y.

Name and Title of Copyrighted Composition	Date of Copyright	No. of Copy-right	Name of		Name of Publisher	Name of Present Copy-right Owner	Name of Present Owner Of Performing Rights	Schedule of Prices for Each Performance for Profit of Each Composition (Sec. 4-A) (9)
			Composer	Author of Words				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
E - Heatin' the Melodeon	11/23/38	72964	Gilbet Roe	J. Alexand	BMC	BMC	BMC	
E - In a Cozy Little Blue Room	12/28/39	81799	Joe Jasmy	Geo. C. MacKimon	BMC	BMC	BMC	
E2 - Little Red Riding Hood	10/5/39	206277	Bee Kilmus	Jimmy Dupre	BMC	BMC	BMC	
E - Little Red Riding Hood	11/3/39	80658	Bee Kilmus	Doe Werges	BMC	BMC	BMC	
E2 - Put it away	11/13/39	207621	Herb Waters	Jack Beller	BMC	BMC	BMC	
E - "Sassin' the boss	5/31/39	77440	Geo. MacKimon	Kay Schloss	BMC	BMC	BMC	
E - Sha-Sha	11/23/38	73327	Manny Kertz	Willie Bums	BMC	BMC	BMC	
E2 - Sweethearts Forever	4/12/39	192976	Jimmy Van Hauser	Ted Choate	BMC	BMC	BMC	
E2 - Sweethearts of Tomorrow	6/8/39	198481	Loretta Clemens	Larry Wagner	BMC	BMC	BMC	
E2 - Swing on Out	11/13/39	207620	Eli Dawson	Chick Adams	BMC	BMC	BMC	
E - Was it Meant to Be	3/14/30	84009	Frank Novak		BMC	BMC	BMC	
E - Where Was I Last Night	11/1/38	72473	Arnold New	Loreta Clemens	BMC	BMC	BMC	
E2 - You let Me down	8/17/39	202467	Eugen West	Ian Donez	BMC	BMC	BMC	
E - You Set Me on Fire	6/1/39	77456	Francis Colwell	Graham Prince	BMC	BMC	BMC	
			Francis Colwell	Gerald Griffen	BMC	BMC	BMC	
				George Le Claire	BMC	BMC	BMC	
				Otis Spencer	BMC	BMC	BMC	
				Geo. C. MacKimon	BMC	BMC	BMC	
				Geo. C. MacKimon	BMC	BMC	BMC	

1937 TO DATE ALL FILE COMPLETE

1578

Grand total = 938 232

DEFENDANTS' TRIAL EXHIBIT A-3

ASCAP PUBLISHER MEMBERS AND THEIR SUBSIDIARIES AS DISCLOSED BY ASCAP PUBLICATIONS, INCLUDING BOOK DATED JANUARY 1, 1936 AND SUPPLEMENT THERETO, ENTITLED "SUPPLEMENT TO DIRECTORY OF COMPOSERS, AUTHORS AND PUBLISHERS OF MUSICAL WORKS AND OF PERFORMING RIGHTS SOCIETIES THROUGHOUT THE WORLD" (BEING EXHIBIT 6, BUCK V. SWANSON, U. S. DISTRICT COURT, DISTRICT OF NEBRASKA, LINCOLN DIVISION, EQUITY NO. 562).

Name	Copy- rights	Name	Copy- rights
A B C Music Corp.	0	Bigelow-Main-Excell Company	0
A B C Standard Music Publications, Inc.	0	Bilhorn Bros. Mus. Co.	0
Abrahams, Maurice, Inc.	0	Birchard, C. C., & Company	19
Abt, Valentine	1	Bleyer, Archie, Inc.	0
Acme Music Publishing Co.	0	Bloom, Harry, Inc.	0
Ager, Yellen & Born- stein, Inc.	14	Blues Music Company	3
Alfred Music Company, Inc.	1	Bond, Carrie Jacobs, & Son	0
Allen, Thornton W., Co.	0	Boston Music Company	71
Allen & Harrison Mus.Co.	0	Bradford, Perry, Inc.	6
Aloha Music Company	1	Bradford, Perry, Music Company	16
Ansee Music Sales Co., Inc.	0	Briegleb, George F., Inc.	1
Artmusic, Inc.	0	Broadway Music Corp.	51
Ascher, Emil, Inc.	1	Brooks & Denton	0
Gene Austin, Inc. (Eugene Austin)	1	Brooks Music Pub. Co.	0
Barnhouse, C. L., Inc.	23	Brown, Nacio Herb, Inc. (N. H. Brown)	9
Baron, M., Inc.	17	Browne, Ted., Music Co.	6
Bates & Bendix	0	Burke Doyle Music Co.	0
Beck, Mort	0	Caesar, Irving	2
Bellfield Publ. Co.	1	Caesar, Irving, Inc.	0
Belwin, Inc.	61	Campano Music Pub., Frank	0
Bendix, Theodore	2	Capano, Frank, Music Pub.	0
Berg, S. M.	0	Carlson, M. L. (Rubank, Inc.)	0
Bergstrom Mus. Co., Ltd.	0	Century Music Pub. Co.	54
Berlin, Irving, Inc.	272	Chappell & Co., Inc.	0
Berlin, Irving, Standard Music Corp.	0	Chappell-Harms, Inc.	0
Berliner, Leo E., Pub. Co.	0	Chilton, Forrest S. (Marks, Edw. B., Music Corp.)	1
Bibo-Lang, Inc.	0	Church, John, Co., The	118

Name	Copy- rights	Name	Copy- rights
Cinema Music Co. (Belwin, Inc.)	3	Evans (George Honeyboy Evans)	1
Circle Music Pub., Inc.	1	Evans Music Co.	0
Clark, Frank, Mus. Co. (Mills Music, Inc.)	0	Excell, E. O., Co.	7
Coleman, Robt. H.	32	Exclusive Pubs., Inc.	0
Composers' Music Corp.	205	Famous Music Corp.	0
Conrad, Con. Music Pub., Ltd.	26	Famous Writers Music Corp.	0
Crawford Music Corp.	5	Farrand, Van L.	0
Crumit, Frank, Songs Co.	6	Fassio, A.	0
Cundy-Bettoney Co. (Ed. B. Marks Music Corp.)	14	Feature Music Syndicate	0
Curtis Music Pub., L. B.	1	Felst, Leo., Inc.	470
Ealy, Joseph, Mus. Pub. Co.	0	Fillmore Music House (Fillmore Bros. Co.)	14
Edwards, Joe, Inc.	1	Findler & Urbanek	9
Davis, Coots & Engel, Inc.	0	Fischer, J., & Bro.	134
Deane, H. F. A., Catalogue	18	Fisher, Fred, Inc.	86
Denton & Haskins Music Pub. Co., Inc.	3	Fisher, Fred, Music Co.	0
De Sylva, Brown & Hender- son, Inc.	4	Fitzsimons, H. T., Co.	9
Dillon, Carl	0	Flammer, Harold, Inc.	59
Ditson, Oliver, Co., Inc.	193	Foley, Charles	0
Dixon-Lane (Music Pub. Co.)	18	Forster Music Pub., Inc.	70
Donaldson, Douglas & Gumble, Inc.	49	Fox Publishing Co., Sam	10
Down Home Music Co.	0	Franklin, John, Music Co.	10
Dresser, Paul, Pub. Co.	2	Galaxy Music Corp.	0
Eby, Walter	0	Gamble-Hinged Music Co.	18
Edwards, Gus, Mus. Pub. Co.	8	Gay, Mace, Catalog	0
Empire Music Co., Inc.	0	Geibel, Adam, Music Co.	7
Engel, Harry, Inc.	0	Gem Music Corp.	0
Elkan-Vogel Co., Inc.	0	Georgeoff Music Pub. Co., Evan	2
Ellis, Robt.	8	Georgia Music Co.	0
		Gershwin Pub. Corp.	21
			1580

<u>Name</u>	<u>Copy- rights</u>	<u>Name</u>	<u>Copy- rights</u>
Gilbert, L. Wolfe, Music Pub. Co.	6	Jerome, M. K.	5
Globe Music Pub. Co.	0	Jerome & Schwartz Pub. Co.	0
Goodman Music Co., Inc.	0	Jones, Isham Music Corp.	6
Gordon, Hamilton S., Inc.	12	Jordan, Julian, Mus. Co.	1
Gordon & Rich, Inc.	0	Jungnickel, Ross, Inc.	8
Gotham Attractions Mus. Co.	0	Kalmar & Ruby Music Corp.	0
Goulden-Leng Music Co.	0	Kalmar, Puck & Abrahams Consolidated	0
Gray, H. W., Co.	186	Kalmus, L. F., Inc.	0
Green & Stept	0	Kay & Kay Music Pub. Corp.	0
Green & White, Inc.	0	Keane, Michael	0
Hall-Mack Co.	44	Keit Music Corp.	0
Halle, R. L.	3	Keit-Engel, Inc.	0
Handman & Goodman, Inc.	0	Kendis Music Corp.	0
Handman, Kent & Goodman, Inc.	0	King, Chas. E.	3
Muddy Bros. Music Co., Inc.	5	Kornheiser, Phil, Inc.	0
Harms, Inc.	319	Kornheiser-Gottler, Inc.	0
Harms, T. B., Co.	18	Kornheiser-Schuster, Inc.	0
Harms-Friml Corp.	5	Krey, Geo. H. Music Co.	0
Harris, Charles K., Music Pub.	9	KREITZLER, FRITZ	
Hatch Music Co.	22		
Haviland, F. B., Pub. Co.	32	Lawrence Music Pubs., Inc.	0
Heffelfinger, R. W.	0	Lecuna Music Co.-Cuba	0
Helf & Hager Co.	0	Leslie, Edgar, Inc.	0
Hope Publishing Co.	14	Lewis Music Pub. Co.	0
Honeyer, Chas. W., & Co. Inc.	6	Lillenas Pub. Co.	0
Huntzinger, R. L., Inc.	12	Lincoln Music Corp.	0
HERBERT, VICTOR		Lorenz Publishing Co.	61
		Lowe-Goulston, Inc.	0
Italia. Book Co.	413	Luckhardt & Belder	0
Jacobs, Walter, Inc.	24	Ludwig Music Pub. Co.	0
Jacques, Percy	0	Luz Brothers Mus. Pubs.	0
Jenkins Music Co. (Jenkins, J. W., Sons Music Co.)	10	Lyceum Music Co.	0
		Madison Music Co.	0

<u>Name</u>	<u>Copy- rights</u>	<u>Name</u>	<u>Copy- rights</u>
Major Music, Inc.	<u>0</u>	Paramount Music Corp.	<u>0</u>
Manus Music Co., Inc.	<u>0</u>	Partee, C. L., Music Co.	<u>0</u>
Mayfair Music Corp.	<u>0</u>	Paul Pioneer Music Co.	<u>0</u>
Marlo Music Corp.	<u>0</u>	Pente Music Co.	<u>0</u>
Marke, Edw. B., Music Corp.	<u>74</u>	Penn, Wm. H.	<u>0</u>
McKinley Music Co.	<u>162</u>	Petrie, H. W., Catalog	<u>0</u>
Melo-Art Music Pubs.	<u>3</u>	Photo Play Music Co. Inc.	<u>39</u>
Melrose Bros. Mus. Co., Inc. (Melrose Bros.)	<u>4</u>	Piedmont Music Co., Inc.	<u>0</u>
Metro-Goldwyn-Mayer Corp.	<u>0</u>	Plantadosi, Al., Mus.Pub.	<u>11</u>
Metropolitan Music Co.	<u>0</u>	Pond, Wm. A., & Co.	<u>12</u>
Metz, Theodore, Music Co.	<u>0</u>	Popular Melodies, Inc.	<u>0</u>
Miller, Bob, Inc.	<u>2</u>	Prelude Music Co.	<u>0</u>
Miller, Roy M.	<u>0</u>	Presser, Theodore, Co.	<u>692</u>
Miller Music, Inc.	<u>0</u>	Primrose & West Mus. Co.	<u>0</u>
Mills Music, Inc. (Mills, Jack, Inc.)	<u>129</u>	Quinke, W. A., & Co.	<u>24</u>
Milsons Music Pub. Corp.	<u>0</u>	Recker, Robert, Music Co.	<u>0</u>
Morris, Joe, Music Co.	<u>32</u>	Red Star Music Co., Inc.	<u>0</u>
Morse, Theodore, Music Co.	<u>4</u>	Red Star Songs, Inc.	<u>0</u>
Movietone Music Corp.	<u>0</u>	Reed, Bert, Catalog	<u>1</u>
Music Buyers Corp.	<u>0</u>	Reed & Kellor Catalog	<u>0</u>
Musiclovers Co.	<u>0</u>	Remick Music Corp. - Jerome H. Remick & Co.	<u>151</u>
Musin, Ovide	<u>0</u>	Ricordi, G., & Co., Inc. of New York	<u>95</u>
Mazarene Pub. House	<u>10</u>	Ringle, Dave	<u>8</u>
Nelson, Jack, Mus. Co.	<u>0</u>	Robbins Music Corp.	<u>0</u>
New World Music Corp.	<u>0</u>	Rodeheaver Co., The (Homer A.)	<u>114</u>
Olman Music Corp.	<u>0</u>	Root, Frank K. & Co.	<u>1</u>
Oxford University Press	<u>0</u>	Rosey, Geo., Band & Orch. Catalog	<u>0</u>
Fullam Music Pubs., Inc.	<u>0</u>	Rossiter, Will	<u>36</u>
Palmer, Robert, Music Pub. Co.	<u>0</u>	Rossiter, Harold, Mus.Co.	<u>0</u>

4

<u>Name</u>	<u>Copy- rights</u>
Weill, Milton, Music Co., Inc.	0
White-Smith Music Pub.Co.	60
Whiteman, Paul, Publications	3
Wiedoeft, Rudy, Mus.Pub.Co.	1
Williams, Clarence, Music Pub. Co.	16
Williams Ernest S.	0
Williams, Harry. Mus. Co.	0
Willis Music Co	32
Willis-Woodward Mus. Co.	574
Witmark, M., & Sons	135
Wood, B. F., Music Co.	0
Words & Music, Inc.	0
World Music Co.	0
Worth, Geo. T., & Co.	0
Wulschner Music Co.	0
Yellen, Jack, Inc.	0
York Music Co., The	0
York & King Music Co.	0
Younts, Vincent, Inc.	2

0 | 0 | 0 | 2 |

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DEFENDANTS' TRIAL EXHIBIT 4-4

Tabulation prepared by William Burton
Richardson showing number of musical compositions
copyrighted in the United States during the year 1922
by each publisher member of foreign societies having
affiliation contracts with the Society. The total
number of compositions thus copyrighted is 5274. The
total number of publishers listed 3513.

COPYRIGHT OFFICE OF THE UNITED STATES OF AMERICA

WASHINGTON, D. C.

I hereby certify that the following list shows the number of original and renewal registrations of copyright for musical compositions made from January 1, 1912 to December 31, 1939, inclusive by years:

Copyright Registrations of Music List			
Year	Published(1)	Unpublished	Total
1912	25729	932	26661
1913	25894	1396	27289
1914	24720	1532	26252
1915	18684	2382	21066
1916	16315	3658	19973
1917	15612	5376	20988
1918	18438	6362	24800
1919	19333	7969	27292
1920	22849	8766	31614
1921	21459	7472	28931
1922	20084	7104	27188
1923	18133	7339	25472
1924	18639	8270	26909
1925	18407	7746	26153
1926	15829	8816	24645
1927	18425	8022	26447
1928	16776	12642	29420
1929	17272	16148	33420
1930	14311	16586	30897
1931	12411	15992	28403
1932	11196	14796	25992
1933	11213	16640	27853
1934	11490	18192	29682
1935	12317	21587	33904
1936	11877	20574	32451
1937	12758	25104	37862
1938	11995	27508	39503
1939			
Total	480655	307804	788459
			80422

Note:

(1) Includes an indeterminate number of published musical compositions also registered as unpublished under section 11 of the Copyright Act, as well as new arrangements of copyrighted works.

In Witness Whereof the seal of the Copyright Office has been affixed this 26th day of March, 1940.

Al Rouse
Register of Copyrights

DEFENDANTS' TRIAL EXHIBIT A-5.

1586

IV. GENERAL.

(1) You will submit to NBC daily in writing reports for all network programs broadcast by your station, upon forms provided by us for that purpose.

(2) You agree to maintain for your station such performing right licenses as now are, or hereafter may be, in general use at broadcasting stations.

(3) Your failure to broadcast a scheduled network program or our failure to deliver it to you, due to failure of facilities, will subject neither of us to liability to the other.

(4) In the event that the transmitter location, power, frequency or hours or manner of operation of your station, are changed at any time so that your station is less valuable to NBC as a network outlet than it is at the time this offer is accepted by you, NBC will have the right to discontinue this arrangement upon thirty days' written notice to you.

(5) The effective date of this arrangement will be the 1st day of March, 1935. It will continue until 12 months after written notice from either of us to the other, of a desire to discontinue it.

(6) If any questions arise under this arrangement they will be determined in accordance with the laws of the State of New York.

(7) A similar plan is being submitted to each of our regular Associated Stations, but any arrangement with your station relates only to NBC and your station and is not related to any arrangement that exists or may later be made between NBC and any other station. Existing contracts, both yours and ours, may, of course, be carried out, although we are hopeful that insofar as they deviate from the plan herein proposed, they can be brought into conformity therewith by mutual consent. It is the policy of the National Broadcasting Company, however, to place its relations with its other regular network stations on the general basis outlined in this letter as far as practicable.

If after examination you find that the arrangement here proposed is satisfactory to you, please indicate your acceptance on the copy of this letter enclosed for that purpose and return that copy to us.

Very sincerely yours,

NATIONAL BROADCASTING COMPANY, Inc.

By [Signature]

Accepted

1935.

Florida West Coast Broadcasting Co., Inc.

President.

Exec V.P.

(Advertising Agents
for Licensees, for the
purpose of this contract.)

APPROVED

Clearwater Chamber of Commerce. Licensee of Radio Station WFLA

By [Signature]

St. Petersburg Chamber of Commerce. Licensee of Radio Station WSUN

By [Signature]

NATIONAL BROADCASTING COMPANY, INC.

966

CLEARWATER CHAMBER OF COMMERCE &
ST PETERSBURG CHAMBER OF COMMERCE
LICENSEES

February 20,
New York, N. Y., ~~1935~~ 1935.

Radio Station WFLA WSUN and
Florida West Coast Broadcasting Co., Inc.
Advertising Agents for the licensees, for the
Gentlemen: purpose of this contract.

We are proposing in this letter the following plan of network cooperation between this Company
and your Station: WFLA-WSUN.

I. NETWORK AFFILIATION AND PROGRAM SERVICE.

In order that your station may continue to serve the public interest, convenience and necessity by broadcasting programs of a quality and character generally beyond the reach of individual stations, NBC will continue to offer your station network programs of wide variety delivered at our expense to your control board at your main studios, including musical, educational, religious, sports, public affairs, international, and special events programs. Except when due to failure of facilities, we will offer to furnish your station a minimum of 200 unit hours* of our network sustaining and commercial programs combined during each 28 day period, or if we fail to do so we will pay you at the hourly rate of compensation set forth later in this letter for network commercial programs at the new rate to advertisers for any time necessary to make up the difference between the service actually offered to your station and the minimum mentioned above. The network sustaining programs which we will offer to furnish are for sustaining use only and may not be sold by your station for commercial sponsorship nor used for any other purpose.

In return for the NBC network affiliation, including sustaining program service, you will waive compensation for 16 unit hours of our network commercial programs broadcast by your station during each 28 day period.

* Unit hours are computed according to the following table:

LOCAL TIME	1 Hour	½ Hour	¼ Hour	¼ Hour
	Unit Hour Credit	Unit Hour Credit	Unit Hour Credit	Unit Hour Credit
WEEKDAYS:				
12:00 M.L. to 3:00 A.M.....	.333	.360	.167	.083
3:00 A.M. to 6:00 P.M.....	.500	.375	.350	.125
6:00 P.M. to 11:00 P.M.....	1.000	.750	.300	.300
11:00 P.M. to 12:00 M.L.....	.500	.375	.350	.167
SUNDAYS:				
12:00 M.L. to 3:00 A.M.....	.333	.360	.167	.083
3:00 A.M. to 12:00 Noon.....	.500	.375	.350	.125
12:00 noon to 6:00 P.M.....	.750	.562	.375	.188
6:00 P.M. to 11:00 P.M.....	1.000	.750	.300	.300
11:00 P.M. to 12:00 M.L.....	.500	.375	.350	.125

II. STATION COMPENSATION

(1) The new basis of station compensation described below and the new basis of payment by your stations for NBC service, including sustaining programs, will not be put in force until the effective date of this new arrangement.

(2) Beginning February 4, 1936, we will pay you for each succeeding 28-day period, approximately 15 days after the close of such period, in accordance with the following provisions:

Your compensation for broadcasting our network commercial programs under this arrangement will be based upon an average unit hour rate computed for each 28-day period by dividing the total value at the network rate for your stations of the network commercial programs broadcast from your stations by the total number of unit hours of such programs during that period.

- (a) For the first 25 unit hours in excess of the 16 unit hours covering the network affiliation, NBC will pay you at the rate of 20% of your average unit hour rate for the 28-day period.
- (b) For the next 25 unit hours, NBC will pay you at the rate of 30% of your average unit hour rate for the 28-day period.
- (c) For all unit hours in excess of 66 unit hours, NBC will pay you at the rate of 37½% of your average unit hour rate for the 28-day period.

The network station rate for your station, on which its compensation will be figured as provided above, will be \$120.00 per full evening hour. This rate will apply between 6:00 P.M. and 11:00 P.M. local time at your stations. Rates for other hours and for shorter periods will be as follows:

LOCAL TIME AT STATION	1 Hour	¾ Hour	½ Hour	¼ Hour
	Network Station Rate	Network Station Rate	Network Station Rate	Network Station Rate
DAILY EXCEPT SUNDAY:				
12:00 Mid. to 3:00 A.M.....	\$40.00	\$32.00	\$24.00	\$16.00
3:00 A.M. to 6:00 P.M.....	60.00	48.00	36.00	24.00
6:00 P.M. to 11:00 P.M.....	120.00	96.00	72.00	48.00
11:00 P.M. to 12:00 Mid.....	60.00	48.00	36.00	24.00
SUNDAY:				
12:00 Mid. to 3:00 A.M.....	40.00	32.00	24.00	16.00
3:00 A.M. to 12:00 Noon.....	60.00	48.00	36.00	24.00
12:00 Noon to 6:00 P.M.....	90.00	72.00	54.00	36.00
6:00 P.M. to 11:00 P.M.....	120.00	96.00	72.00	48.00
11:00 P.M. to 12:00 Mid.....	60.00	48.00	36.00	24.00

Rates for periods longer than one hour will be in exact proportion to the corresponding one-hour rate. Commissions to agencies and discounts and rebates to advertisers will not be applied to the foregoing rates in computing the average unit hour rate for your station. New network rates to advertisers are being announced, effective February 4, 1935. These rates to advertisers are subject to change from time to time by NBC but the rate of compensation for your station as set forth herein will not be affected by such changes.

(3) Under our policies and commitments with our network advertisers some of the network commercial programs which we will supply to your station prior to February 4, 1936, will be paid for

by our network advertisers at the old rate in effect prior to February 4, 1935. Therefore, your compensation between the effective date of this letter and February 4, 1936, will be computed for each twenty-eight day period as follows:

- (a) The total amount of time of network commercial programs broadcast by your ^{combined} stations will be computed in unit hours and the number of such unit hours at the old rate to advertisers and at the new rate to advertisers, respectively, will be determined.
- (b) For all network commercial programs broadcast at the old rate to advertisers, NBC will pay your station at your station's present rate of compensation.
- (c) For all network commercial programs broadcast at the new rate to advertisers, NBC will pay your station at the rates of compensation set forth in (a), (b), and (c) of Paragraph II—E, above, provided however, that the number of unit hours specified in each of those compensation brackets will be reduced to the proportionate number of such unit hours that the number of unit hours of network commercial programs broadcast at the new rate to advertisers bears to the total number of unit hours of network commercial programs broadcast by your ^{combined} stations.
- (d) Your ^{combined} stations will pay NBC the proportionate part of \$1,384.62 (the present sustaining fee pro-rated for a 28-day period) that the number of unit hours of network commercial programs broadcast at the old rate to advertisers bears to the total number of unit hours of network commercial programs broadcast by your station.
- (e) Your ^{combined} stations will waive compensation for the proportionate part of 14 unit hours that the number of unit hours of network commercial programs broadcast at the new rate to advertisers bears to the total number of unit hours of network commercial programs broadcast by your ^{combined} stations.

III. NETWORK OPTIONAL TIME

(a) Upon 28 days' notice, your ^{combined} stations will broadcast network commercial programs for NBC during any periods requested by NBC within the hours designated below as Network Optional Time, provided, that because of your public responsibility your ^{combined} stations may reject a network program the broadcasting of which would not be in the public interest, convenience and necessity.

Network optional time will be as follows:

Weekdays	(New York City Time)	Sundays
10:00 A.M. - 12:00 Noon		1:00 - 4:00 P.M.
3:00 P.M. - 6:00 P.M.		5:00 - 6:00 P.M.
7:00 P.M. - 7:30 P.M.		7:00 - 11:00 P.M.
8:00 P.M. - 11:00 P.M.		

(b) You will maintain and operate the broadcasting equipment of your ^{combined} stations in such manner as to keep pace with the broadcasting art and will keep the operation of such equipment entirely under your control.

(c) We will give you at least 28 days' advance notice of the discontinuance of any scheduled series of network commercial programs, falling which we will pay you the compensation you would have received if the series had continued for 28 days following the receipt by you of notice of discontinuance, except that you will not be entitled to compensation for any discontinued programs for which we substitute another network commercial program.

(d) Because of the public responsibility of the network and its Associated Stations, NBC may at any time substitute for any scheduled network program a network program which involves a special event of public interest or importance. No compensation will be paid for the cancelled program nor for the substituted program unless the substituted program is commercially sponsored, when the regular compensation will be paid for it.

AGREEMENT

between

COLUMBIA BROADCASTING SYSTEM, Inc.®

485 Madison Avenue, New York, New York and

TAMPA TIMES COMPANIES

Radio Station WFLA, Tampa, Florida

intended to operate

radio station WFLA at Tampa, Florida

full time on a frequency of 1350 kilocycles

with a power of 1,000 watts operation and 1,000 watts midnight/noon

Columbia is engaged in operating a radio broadcasting network and in financing programs in which stations are the network's own program material. The stations are operated by Columbia or otherwise, some of such programs, known as "special programs", are sold by Columbia for operation by the stations. All non-operated programs are known as "networking programs". The Station and Columbia recognize that the station regularly broadcasting to the Station will be interested, to that extent, in Columbia's policies for the Station with programs not otherwise locally available, including broadcasts from the network of national and international events, presentation of music, drama and other entertainment from the principal sources of value, information, educational and cultural broadcasts of general interest and other programs of public importance and value.

Accordingly, it is mutually agreed as follows:

1. Columbia will furnish to the Station for broadcasting by the Station all available network material

ing programs, which design and Columbia network special programs for which there may appear broadcasting by the Station and which are consistent with Columbia's sales and program policies. Columbia agrees that it will make available to the Station an average of at least one hour per week of network material and sponsored programs. Network material programs made available by Columbia are for marketing use only and may not be sold for local sponsorship or used for any other purpose without the consent of Columbia in writing.

2. The Station will broadcast all network sponsored programs furnished to it by Columbia during the time when the Station is licensed to operate; provided, however, that except in connection with extended sponsored programs of special interest (such as World Radio broadcasts) during periods of not more than two weeks each, the Station need not in any week broadcast network sponsored programs exceeding more than fifty "network hours" (as defined below), but for this purpose computed during the entire term of

this agreement on the basis of the differences in rates at different hours specified in Columbia's Rate Card No. 23)). The Station may require Columbia to give not less than twenty-eight days' prior notice of the commencement of sponsored programs for new accounts. Either the Station or Columbia may on special occasions substitute for one or more of such sponsored programs sustaining programs devoted to education, public service or events of public interest without any obligation to make any payment on account thereof, and in the event of such substitution by either party it will notify the other by wire as soon as practicable after deciding to make such substitution. In case the Station has reasonable objection to any sponsored program or the product advertised thereon as not being in the public interest the Station may, on three weeks' prior notice thereof to Columbia, refuse to broadcast such program, unless during such notice period such reasonable objection of the Station shall be satisfied. The Station will not make commercial spot announcements in the "break" occurring before or after

3. Columbia will pay the Station for broadcasting network sponsored programs furnished by Columbia at the rates for "converted hours" specified in Schedule A attached hereto and hereby in all respects made a part hereof. A "converted hour" means an aggregate period of one hour during which there shall be broadcast over the Station one or more network sponsored programs for which Columbia shall charge its full night-time card rate for the Station. An aggregate period of one hour during which there shall be broadcast over the Station one or more network sponsored programs for which Columbia shall charge a fraction of its night-time card rate, such as its day-time card rate, shall be the equivalent of the same fraction of a "converted hour". Fractions of an hour shall for all purposes be treated as their fractional proportions of full hours at the same time of the day.

Payment to the Station will be made by Columbia for network sponsored programs broadcast over the Station within twenty days following the termination of Columbia's four or five week fiscal period, as the

case may be, during which such sponsored programs were broadcast.

4. The Station will maintain and operate its facilities in accordance with the best practices in the broadcasting art and conduct of the industry and in accordance with good engineering practice, and will have such license or other agreements as shall be necessary to enable the Station to broadcast copyrighted material included in programs to be furnished by Columbia.

5. If the power, frequency, time or manner of operation of the Station is changed, resulting in a substantial lessening of the value of the Station as an outlet for Columbia network programs, Columbia may at any time thereafter terminate this agreement on at least sixty days' notice to the Station.

6. Columbia will whenever practicable provide in advance notices of the programs to be furnished to the Station. In the event of any change of program, Columbia will notify the Station as soon as possible and the Station will make every effort immediately to conform with the substituted program.

7. Neither party shall be liable to the other for failure to supply programs for broadcasting if such failure is due to failure of equipment or action or claims by network clients, labor disputes or any cause or reason beyond the party's control.

8. Columbia will continue the Station as the exclusive Columbia outlet in the present standard broadcast band in the city in which the Station is located and will so publicize the Station, and will not furnish its exclusive network programs to any other station in the present standard broadcast band in that city, except in case of public emergency. The Station will operate as the exclusive Columbia outlet in the present standard broadcast band in such city and will so publicize itself, and will not join for broadcasting purposes any other formally organized or regularly constituted group of broadcasting stations. The Station shall be free to join occasional local, state-wide or regional hook-ups to broadcast special events of public importance.

9. The obligations under this agreement are subject to all applicable laws, rules and regulations, present and future, especially including rules and

regulations of the Federal Communications Commission.

10. If the Station applies to the Federal Communications Commission for consent to a transfer of its license or proposes to transfer all or any of its assets without which it would be unable to perform this agreement, it will procure the agreement of the proposed transferee that, upon the consummation of the transfer, the transferee will assume and perform this agreement, unless Columbia shall waive this condition in writing.

11. If either the Station or Columbia fails to insist upon strict performance of any of the covenants or conditions of this agreement, such failure shall not be construed as an election or as a waiver or condonation of any breach, or as a waiver or relinquishment for the future of any such covenants or conditions.

12. Any notice hereunder shall be sent to the parties at their respective addresses hereinbefore set forth.

13. This agreement has been made in the State

of New York and shall be governed by the laws of that State applicable to contracts fully to be performed therein, and this agreement is not subject to oral modification.

14. As of the beginning of the term hereof, this agreement takes the place of and is substituted for any and all agreements heretofore existing between the parties hereto, subject only to the fulfillment of any accrued obligations thereunder.

The term of this agreement shall begin on the date hereof and shall continue to and including January 10, 1945.

~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~

IN WITNESS WHEREOF, THE SIGNER

11th day of January, 1940

COLUMBIA BROADCASTING SYSTEM, INC.

By

W. H. Schuchert V.P.

TAMPA BAY NEWS COMPANY

By Joseph Nicholson V.P.

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[fol. 1591] DEFENDANTS' TRIAL EXHIBIT A-8

Regular Meeting, Board of Directors

Friday, June 3rd, 1932

Present

Louis Bernstein	Jerome Kern
E. F. Bitner	Edgar Leslie
S. H. Bornstein	Fred H. Martens
Gene Buck	Edwin H. Morris
Robert Crawford	Gustave Schirmer
Walter Douglas	Oley Speaks
Max Dreyfus	Will Von Tilzer
Walter Fischer	Joseph Young
Otto Harbach	Nathan Burkan, Counsel
Raymond Hubbell	E. C. Mills, General Manager

Absent

Irving Caesar	Sigmund Romberg
George Fischer	Harry Warren
Jack Mills	

The President called the meeting to order, declared a quorum present, and directed that the Minutes of the previous meeting be read. Minutes of the regular meeting, May 26th, were read and upon motion duly made, seconded and carried, were approved.

Mr. Saul Bornstein stated that the Treasurer had no report.

Chairmen of the following Committees, respectively, stated that each of them had no report:

- Finance Committee,
- Membership Committee
- Foreign Relations Committee
- Relief Committee
- Song Sheet and "Cut-in" Committee
- Complaint Committee

Mr. Bitner, Chairman, presented the report of the Administrative Committee regarding negotiations had with the Special Copyright Committee representing the National

Association of Broadcasters. He stated that the Committee at a conference held June 2nd, had proposed a postponement of the effective date of any increase in license fees to May 1st, 1933 such postponement however to be wholly dependent upon an increase over the amounts presently being paid of 25% in rates effective May 1st, 1933; and an increase of 50% over present rates effective May 1st, 1934 and thereafter.

[fol. 1592] Furthermore, that if this proposal be accepted, the Broadcasters Committee suggests a complete truce as to legislative, publicity, propaganda and similar matters. He stated that after various discussions, the Broadcasters Committee agreed to change the effective date upon which increases shall become effective until January 1st, 1933 and they agree in principle that six months prior to December 31st, 1933 they will agree or disagree as to the adoption of a percentage formula to govern rates for 1934 and thereafter. He stated that the Broadcasters Committee was not unanimous in the opposition to adopting a percentage plan.

He thereupon reported the recommendation of the Administrative Committee to the Board that the General Manager be authorized to quote the Broadcasters Committee upon the following basis:

\$1,250,000 in all for the year 1933.

A readjusted sustaining fee plus 3% of the amounts charged by the stations for the use of their facilities to commercial sponsors during the year 1934.

4% plus the same consideration during the year 1935.

5% plus the same consideration during 1936 and thereafter.

Mr. Bernstein inquired as to what reasoning supported the recommendation of the Administrative Committee. Mr. Bitner and others responded.

Mr. Bornstein addressed the Board at length urging that it do not consider any proposition other than the one set out in our circular letter to stations under date of April 12th, to wit: A readjusted sustaining fee plus 5% of gross charges for the use of facilities with the effective date of putting these rates into effect as of September 1st, 1932.

Mr. Dreyfus inquired as to whether the Administrative Committee felt that we could succeed if we held out for 5% for the above terms. Mr. Bitner, Chairman of the Ad-

Administrative Committee, replied that he felt that it was not in the cards, that the broadcasting industry as a whole was in the red, that the future of the Society was at stake, that in view of the current depression, existing contracts between broadcasters and advertisers, the ill will and antagonism that would be engendered, the litigation that would be involved and the effects thereof in decreased dividends, were all factors which made it seem inadvisable to demand higher rates at this time than those proposed by the Administrative Committee.

[fol. 1593] Mr. Dreyfus stated that it was well known that all Publishers were in the same desperate situation as had been described by Mr. Bornstein but urged that we should not adopt a hard and fast rule today; that he is sympathetic toward the proposal of the Administrative Committee or some form of compromise as this is not time for a fight. He urged the Board to authorize a compromise.

Mr. Kern stated that he was very definitely opposed to a fight at this time and was followed by Mr. Bernstein who endorsed Mr. Bornstein's remarks. He thought we should make a test,—suggested that our Reserve Fund had been established and built up for the very purpose of meeting this sort of a situation. He denied that the Broadcasters were losing money, stated that he was in favor of demanding a discontinuance of the use of all music on radio, and suggested that a General Meeting be called for the purpose of submitting the matter to the entire membership. He suggested that we should quote a rate of 25% to be effective at once unless the Broadcasters would accept the principle of paying 5% plus a sustaining fee one year from now. He stated that the Publishers have their backs against the wall and that regardless of the consequences of a battle, he thought we ought to die fighting.

Mr. Douglas endorsed the remarks of Messrs. Bornstein and Bernstein, not as a matter of expediency, but of plain necessity, and said that unless higher rates can be put into effect at once, the Publishers cannot continue to exist. Mr. Burkan discussed the subject and stated that he was in favor of a compromise. Mr. Bornstein stated that he had listened carefully to all that had been said but that he had heard nothing to change his mind, and again suggested that the Board should authorize a rate of 5% plus a sustaining fee effective as of September 1st.

The Board thereupon adjourned for lunch.

Upon reconvening, it was moved, seconded and unanimously carried that the Society do not accept the proposition tendered by the Committee representing the National Association of Broadcasters.

It was moved and seconded that the recommendations of the Administrative Committee be rejected. The motion was lost,—7 ayes, 9 nos—Edwin Morris not voting.

It was moved and seconded that the recommendation of the Administrative Committee be adopted. The motion was lost,—7 ayes, 8 nos—Edgar Leslie not voting.

It was moved, seconded and carried that the General Manager and the Administrative Committee negotiate with the Broadcasters' Committee upon the following basis:

Commencing January 1st, 1933 a readjusted sustaining fee plus 3% of amounts charged for facilities.

[fol. 1594] Effective January 1st, 1934 the same plus 4%.

Effective January 1st, 1935 the same plus 5%.

Messrs. Kern and Speaks voting No, Bornstein not voting.

It was moved, seconded and carried that Joseph Young be elected a Director to fill the unexpired term of Walter Donaldson.

It was moved, seconded and carried that George W. Meyer be elected to fill the unexpired term as Director of Joseph Young.

There being so much unfinished business before the Board, it was suggested that another meeting be held next week. Motion to adjourn was unanimously carried.

(Signed) Joseph Young, Secretary.

ovb.

[fol. 1595] DEFENDANTS' TRIAL EXHIBIT a-9

Memorandum of Agreement between American Society of Composers, Authors & Publishers (hereinafter styled "Society") and National Broadcasting Company, Inc. (hereinafter styled "Licensee"), as follows:

1. Society grants to Licensee, its successors and assigns, and Licensee accepts for a period of three years from September 1st, 1932 a license to publicly perform by radio broadcasting from its station now known as WEAJ located at New York, New York, together with its synchronized

auxiliary units and any short wave experimental stations it may operate in connection therewith and/or by television broadcasting non-dramatic renditions of the separate musical compositions, heretofore or hereafter during the term hereof copyrighted or composed by members of Society of or which Society has the right to license such performing rights.

2. The within license does not extend to or include the public performance by broadcasting or otherwise of any rendition or performance of any opera, operetta, musical comedy, play or like production, as such, in whole or in part.

3. Nothing herein contained shall be construed as authorizing Licensee to grant to others any right to reproduce or perform publicly for profit by any means, method or process whatsoever, any of the musical compositions coming within the purview of the within license performed pursuant hereto, or as authorizing any receiver of any such broadcast rendition of any of the said compositions to publicly perform or reproduce the same for profit by any means, method or process whatsoever.

4. The Society acknowledges, however, its understanding that the radio station herein mentioned is a part of the radio chains or networks of the National Broadcasting Company, Inc. and that while many of the programs broadcast over such chains or networks originate at such station many other of the network programs are originated at other stations. Society agrees, and it is a condition of this Memorandum of Agreement, that so long as Licensee hereunder shall fully perform each and all of its obligations hereunder, National Broadcasting Company, Inc. may continue to carry on its business of maintaining and operating a radio broadcasting chain or network and may do and cause to be done any and all things necessary or proper in the conduct of such business without the payment of any license or other fee to Society.

5. Except as specifically provided in Article "4" hereof, the within license is limited to the separate musical compositions heretofore or hereafter during the term hereof copyrighted or composed by members of Society, or of which Society has the right to license the performing rights hereinbefore granted, in programs rendered at or from said radio station, or at or from any other place duly licensed by So-

ciety to perform such works (unless the performance originates at a place or from a source which the Society does not customarily license) from which place rendition of such works is transmitted to said radio station for the purpose of being broadcast from said station. It is understood, however, that Licensee shall only be guilty of a breach under this Article "5" in the event that it continues to broadcast a program rendered at such place other than Station WEAF after Licensee has received information from Society that such other place is unlicensed by Society to perform.

6. The within license is granted upon the express condition:

A. That should the power in-put and wave length as at present authorized by the Federal Radio Commission for the said station (power—fifty thousand (50,000) watts, and wave length assignment—454.5 meters, 660 k. c.) be changed during the term hereof, the basic fee as provided in the first paragraph of Article "9" hereof shall be adjusted.

B. That in the event that the license of said station from the Federal Radio Commission is terminated, cancelled, re-[fol. 1596]voked or suspended, or in the event that radio broadcasting is supported from other sources, or operated by other than private interests, as now prevails, Licensee shall promptly notify Society thereof and either Society or Licensee may then terminate this Agreement and in that event Licensee shall be under no further liability to Society for the payment of any license fee hereunder; provided, however, that if the license of said station to broadcast is only suspended for a period less than the term of the within license from Society, then in such event Licensee shall be relieved from the payment of the license fee hereunder only during such period of suspension.

7. Licensee agrees to furnish to Society during the term of the within license a list of all musical compositions (or, at the option of Licensee, a list of all musical compositions heretofore or hereafter during the term hereof copyrighted or composed by members of Society or of which Society has the right to license the performing rights hereinbefore granted) broadcast from or through the said station showing the title of each composition and the composer and/or author thereof; provided that Licensee shall not be obli-

gated under this Article "7" to furnish such a list covering a period or periods in the aggregate during any one calendar year in excess of three months. The lists so furnished by Licensee to Society shall be strictly confidential and Society covenants that it will make no disclosure thereof or of the contents thereof.

8. Society agrees during the term hereof to maintain for the service of Licensee substantially its present catalogue of compositions heretofore or hereafter during the term hereof copyrighted or composed by members of Society. Society reserves the right however, at any time and from time to time to withdraw from its repertory and from operation or the within license any musical composition or compositions; and upon any such withdrawal, Licensee may immediately cancel the within Agreement by giving written notice to Society of its election so to do.

In the event of any such cancellation by Licensee or in the event of a termination of this Agreement and the within license pursuant to the provisions of Article "6" hereof, or otherwise, Society shall refund to Licensee pro rata license fees, if any, paid for a period beyond the date of such cancellation or termination.

9. Under the terms and conditions hereinabove set forth, Licensee agrees to pay to Society, as compensation for the within license, the sum of thirty-seven thousand five hundred dollars (\$37,500.) per annum, payable in equal monthly instalments on or about the 25th of each month during the term hereof plus

(a) for the first year of the term hereof a sum equal to three per cent. (3%) of the net receipts (as hereinafter defined) of the said station from the sale of its broadcasting facilities; and

(b) for the second year of the term hereof a sum equal to four per cent. (4%) of the net receipts (as hereinafter defined) of the said station from the sale of its broadcasting facilities; and

(c) for the third year of the term hereof a sum equal to five per cent. (5%) of the net receipts (as hereinafter defined) of the said station from the sale of its broadcasting facilities.

(d) The term "net receipts" from the sale of its broadcasting facilities shall refer to the full amount charged by and actually paid to said station for the use of its broadcasting facilities (sometimes known as "time on the air"), after deducting commissions not exceeding fifteen per cent. (15%), if any, paid to the advertising agent or agency (not employed or owned in whole or in part by Licensee).

Licensee shall render monthly statements to Society on or about the 25th of each month covering the period of the preceding calendar month on forms supplied gratis by Society, and shall include in such statements all items, without exception, charged during the said month for the use of the broadcasting facilities of the said station which said statement shall be rendered under oath and accompanied by the remittance due Society under the terms hereof. Any such statement may also include a deduction by or credit to the said station for any amount reported by it as charged during a prior month for the use of its broadcasting facilities but which it has been compelled to refund as a "time discount." In the event that any such item shall be collected after it has been credited or deducted as aforesaid, it shall then be included again in the net receipts of said station on the monthly statement next succeeding the date of the actual collection.

10. Society shall have the right, by its duly authorized representative, at any time during customary business hours, to examine the books and records of account of Licensee only to such extent as may be necessary to verify any such monthly statement of accounting as may be rendered pursuant hereto; provided that such examination does not interfere with the usual conduct of business by Licensee.

11. Upon any breach or default of any terms herein contained, Society may give Licensee thirty (30) days notice in writing to repair or correct such breach or default and in the event that such breach or default has not been repaired or corrected within said thirty (30) days, Society may then forthwith cancel said license.

12. Society agrees to indemnify, save and hold Licensee harmless, and defend Licensee from and against any claim,

mands or suits that may be made or brought against the licensee with respect to renditions given during the term hereof in accordance with this License of musical compositions contained in Society's repertory heretofore or hereafter during the term hereof copyrighted or composed by members of Society.

In the event of the service upon Licensee of any notice, process, paper or pleading, under which a claim, demand or action is made or begun against Licensee on account of any such matter as is hereinabove referred to, Licensee shall forthwith give Society written notice thereof and simultaneously therewith deliver to Society any such notice, process, paper or pleading, or a copy thereof, and Society shall have sole and complete charge of the defense of any action or proceeding in which any such notice, process, paper or pleading is served. Licensee, however, shall have the right to engage counsel of its own, at its own expense, and may participate in the defense of any such action or proceeding and with whom counsel for Society shall co-operate. Licensee shall co-operate with Society in every way in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, affidavits or other instruments, but at the sole expense of Licensee, that may be required in order properly to defend against any such action or proceeding, and properly to prosecute any appeals taken therein.

In the event of the service upon Licensee of any notice, process, paper or pleading, under which a claim, demand or action is made or begun against Licensee on account of the rendition of any musical composition contained in the Society's repertory but not heretofore or hereafter during the term hereof copyrighted or composed by members of Society, Society agrees at the request of Licensee to co-operate with and assist Licensee in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein.

All notices required or permitted to be given by or of the parties to the other hereunder shall be duly and properly given if mailed to such other party by regis-

tered United States mail addressed to such other party at its main office for the transaction of business.

In Witness Whereof this Agreement has been duly subscribed by Society and Licensee this 31st day of August, 1932.

American Society of Composers, Authors and Publishers, by E. C. Mills. National Broadcasting Company, Inc., by (Signature Illegible).

[fol. 1599] DEFENDANTS' TRIAL EXHIBIT A-10

Memorandum of Agreement between American Society of Composers, Authors & Publishers (hereinafter styled "Society") and Atlantic Broadcasting Corporation (hereinafter styled "Licensee"), as follows:

1. Society grants to Licensee, its successors and assigns, and Licensee accepts for a period of three years from September 1st, 1932 a license to publicly perform by radio broadcasting from its station now known as WABC located at New York, New York, together with its synchronized auxiliary units and any short wave experimental stations it may operate in connection therewith and/or by television broadcasting from station now known as W2XAB located at New York, New York, non dramatic renditions of the separate musical compositions, heretofore or hereafter during the term hereof copyrighted or composed by members of Society or of which Society has the right to license such performing rights.

2. The within license does not extend to or include the public performance by broadcasting or otherwise of any rendition or performance of any opera, operetta, musical comedy, play or like production, as such in whole or in part.

3. Nothing herein contained shall be construed as authorizing Licensee to grant to others any right to reproduce or perform publicly for profit by any means, method or process whatsoever, any of the musical compositions coming within the purview of the within license performed pursuant hereto, or as authorizing any receiver of any such broadcast rendition of any of the said compositions to pub-

ely perform or reproduce the same for profit by any means, method or process whatsoever.

4. Society acknowledges its understanding that the radio station known as WABC is part of the radio chain or network of the Columbia Broadcasting System, Inc., and that while many of the programs broadcast for such chain or network originate at said station, many other of the network programs are originated at other stations. Society agrees, and it is a condition of this Memorandum of Agreement, that so long as Licensee hereunder shall fully perform each and all of its obligations hereunder, Columbia Broadcasting System, Inc. may continue to carry on its business of maintaining and operating a radio broadcasting chain or network and may do and cause to be done any and all things necessary or proper in the conduct of such business without the payment of any license or other fee to Society.

5. Except as specifically provided in Article "4" hereof, the within license is limited to the separate musical compositions heretofore or hereafter during the term hereof copyrighted or composed by members of Society, or of which Society has the right to license the performing rights hereinbefore granted, in programs rendered at or from said radio station now known as Station WABC, or at or from any other place duly licensed by Society to perform such works (unless the performance originates at a place or [Vol. 1600] from a source which the Society does not customarily license) from which place rendition of such works is transmitted to said radio station for the purpose of being broadcast from said station. It is understood, however, that Licensee shall only be guilty of a breach under this article "5" in the event that it continues to broadcast a program rendered at such place other than Station WABC after Licensee has received information from Society that such other place is unlicensed by Society to perform.

6. The within license is granted upon the express condition:

A. That should the power in-put and wave length as at present authorized by the Federal Radio Commission for the said station now known as WABC (power—fifty thousand (50,000) watts, and wave length assignment—348.6 meters, 860 k. c.) be changed during the term hereof, the

basic fee as provided in the first paragraph of Article " hereof shall be adjusted.

B. That in the event that the license of said station from the Federal Radio Commission is terminated, cancelled, revoked or suspended, or in the event that radio broadcasting is supported from other sources, or operated by other than private interests, as now prevails, Licensee shall promptly notify Society thereof and either Society or Licensee may then terminate this Agreement and in that event Licensee shall be under no further liability to Society for the payment of any license fee hereunder; provided, however, that if the license of said station now known as WABC to broadcast is only suspended for a period less than the term of the within license from Society, then in such event Licensee shall be relieved from the payment of the license fee hereunder only during such period of suspension.

7. Licensee agrees to furnish to Society during the term of the within License a list of all musical compositions (at the option of Licensee, a list of all musical compositions heretofore or hereafter during the term hereof copyrighted or composed by members of Society or of which Society has the right to license the performing rights hereinbefore granted) broadcast from or through the said station now known as WABC, showing the title of each composition and the composer and/or author thereof; provided that Licensee shall not be obligated under this Article "7" to furnish such a list covering a period or periods in the aggregate during any one calendar year in excess of three months. The list so furnished by Licensee to Society shall be strictly confidential and Society covenants that it will make no disclosure thereof or of the contents thereof.

8. Society agrees during the term hereof to maintain for the service of Licensee substantially its present catalog of compositions heretofore or hereafter during the term hereof copyrighted or composed by members of Society [fol. 1601] Society reserves the right however, at any time and from time to time to withdraw from its repertory and from operation of the within license any musical composition or compositions; and upon any such withdrawal, Licensee may immediately cancel the within Agreement by giving written notice to Society of its election so to do.

In the event of any such cancellation by Licensee or in the event of a termination of this Agreement and the within license pursuant to the provisions of Article "6" hereof, or otherwise, Society shall refund to Licensee pro rata license fees, if any, paid for a period beyond the date of such cancellation or termination.

9. Under the terms and conditions hereinabove set forth, Licensee agrees to pay to Society, as compensation for the within license, the sum of thirty thousand dollars (\$30,000) per annum, payable in equal monthly instalments on or before the 10th of each month during the term hereof plus

(a) for the first year of the term hereof a sum equal to three per cent (3%) of the net receipts (as hereinafter defined) of the Licensee from the sale of its broadcasting facilities; and

(b) for the second year of the term hereof a sum equal to four per cent (4%) of the net receipts (as hereinafter defined) of the Licensee from the sale of its broadcasting facilities; and

(c) for the third year of the term hereof a sum equal to five per cent (5%) of the net receipts (as hereinafter defined) of the Licensee from the sale of its broadcasting facilities.

(d) The term "net receipts" from the sale of its broadcasting facilities shall refer to the full amount charged by and actually paid to Licensee for the use of its broadcasting facilities (sometimes known as "time on the air"), after deducting commissions not exceeding fifteen per cent (15%), if any, paid to the advertising agent or agency (not employed or owned in whole or in part by Licensee).

Licensee shall render monthly statements to Society on or before the 10th of each month covering the period of the preceding calendar month on forms supplied gratis by Society, and shall include in such statements all items, without exception, charged during the said month for the use of the broadcasting facilities of the said station now known as WABC, which said statement shall be rendered under oath and accompanied by the remittance due Society under the terms hereof. Any such statement may also include a deduction by or credit to the Licensee for any amount reported by it as charged during a prior month for the use

of its broadcasting facilities but which it has been compelled to refund as a "time discount". In the event that any such item shall be collected after it has been credited or deducted as aforesaid, it shall then be included again in the net receipts of Licensee on the monthly statement next succeeding the date of the actual collection.

[fol. 1602] 10. Society shall have the right, by its duly authorized representative, at any time during customary business hours, to examine the books and records of account of Licensee only to such extent as may be necessary to verify any such monthly statement of accounting as may be rendered pursuant hereto; provided that such examination does not interfere with the usual conduct of business by Licensee.

11. Upon any breach or default of any terms herein contained, Society may give Licensee thirty (30) days notice in writing to repair or correct such breach or default and in the event that such breach or default has not been repaired or corrected within said thirty (30) days, Society may then forthwith cancel said license.

12. Society agrees to indemnify, save and hold Licensee harmless, and defend Licensee from and against any claim, demands or suits that may be made or brought against the Licensee with respect to renditions given during the term hereof in accordance with this License of musical compositions contained in Society's repertory heretofore or hereafter during the term hereof copyrighted or composed by members of Society.

In the event of the service upon Licensee of any notice, process, paper or pleading, under which a claim, demand or action is made or begun against Licensee on account of any such matter as is hereinabove referred to, Licensee shall forthwith give Society written notice thereof and simultaneously therewith deliver to Society any such notice, process, paper or pleading, or a copy thereof, and Society shall have sole and complete charge of the defense of any action or proceeding in which any such notice, process, paper or pleading is served. Licensee, however, shall have the right to engage counsel of its own, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for Society shall cooperate. Licensee shall cooperate with Society in every

way in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, bonds or other instruments, but at the sole expense of Society, that may be required in order properly to defend and resist any such action or proceeding, and properly to prosecute any appeals taken therein.

In the event of the service upon Licensee of any notice, process, paper or pleading, under which a claim, demand or action is made or begun against Licensee on account of the rendition of any musical composition contained in the Society's repertory but not heretofore or hereafter during the term hereof copyrighted or composed by members of Society, Society agrees at the request of Licensee to cooperate with and assist Licensee in every way possible in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein.

13. All notices required or permitted to be given by either of the parties to the other hereunder shall be duly and properly given if mailed to such other party by registered United States mail addressed to such other party at its main office for the transaction of business.

In Witness Whereof this Agreement has been duly subscribed by Society and Licensee this 31st day of August, 1932.

American Society of Composers, Authors and Publishers. By E. C. Mills. Atlantic Broadcasting Corporation. By William S. Carey, Pres.

[fol. 1604]

PLAINTIFFS' DEPOSITION EXHIBIT 1

This exhibit contains a list of approximately 400 copyrighted compositions, of which the words or music were written by Irving Caesar. Such compositions were copyrighted at various dates between 1919 and 1939. Specimen compositions giving the collaborator, the publisher, the date of copyright, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Remarks
Adored One.....	Sigmund Romberg.....	Harms Inc.....	9/21/31	Nina Rosa
Crazy Rhythm.....	Joseph Meyer, Roger Wolfe Cahn.....	Harms Inc.....	4/14/28	Here's Hows
I Want to be Happy.....	Vincent Youmans.....	Harms Inc.....	6/19/24	No, No, Nanette
Is It True What They Say About Dixie.....	Gerald Marks, Sammy Lerner.....	Irving Caesar Inc.....	1/22/36	
Just A Gigolo.....	L. Casucci.....	DeSylva, Brown & Henderson	12/28/30	
Longing (Triste Ricordo).....	Adolfo Geniso, Ernesto DeCurtis.....	Harms Inc.....	6/13/21	
No, No, Nanette.....	Otto Harbach, Vincent Youmans.....	Harms Inc.....	6/ 3/26	No, No, Nanette
Sing A Song of Safety.....	Frank Mandel.....	Irving Caesar Inc.....	5/ 7/37	
Sometime I'm Happy.....	Gerald Marks.....	Harms Inc.....	4/21/27	Hit the Deck
Swanee.....	Vincent Youmans.....	Harms Inc.....	11/ 1/19	
Tea for Two.....	Vincent Youmans.....	Harms Inc.....	6/19/24	No, No, Nanette
There's Something Spanish in Your Eyes.....	Cliff Friend.....	Remick & Co.....	12/ 9/27	
What a Perfect Combination.....	Bert Kalmer, Harry Ruby, Harry Akst	Harms Inc.....	10/28/32	

PLAINTIFFS' DEPOSITION EXHIBIT 2

Agreement between Irving Caesar and American Society of Composers, Authors and Publishers. (Hereinafter referred to as "Society"). This exhibit is identical with Exhibit "C" to the Bill of Complaint except for names and dates.

[Vol. 1605]

PLAINTIFFS' DEPOSITION EXHIBIT 3

This exhibit contains a list of approximately 129 copyrighted compositions, of which the music was composed by Deema Taylor. Such compositions were copyrighted at various dates between 1909 and 1937. Specimen compositions giving the collaborator, if any, the publisher, and the date of copyright, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Remarks
Ballet Miniature.....		J. Fischer & Bro.....	3/ 4/18	
Ballet Music.....		J. Fischer & Bro.....	10/26/14	Casanova
Chambered Nautilus.....	O. W. Holmes.....	Oliver Ditson Co.....	12/ 3/19	
Concordi Laetitia (Hymn to the Virgin).....	E. Hooker.....	J. Fischer & Bro.....	12/31/26	
King's Henchman.....	E. St. V. Millay.....	J. Fischer & Bro.....	12/30/30	
Peter Ibbetson.....	G. Du Maurier, C. Collier.....	J. Fischer & Bro.....	5/ 8/18	Two Studies in Rhythm
Prelude.....		J. Fischer & Bro.....	10/ 4/17	
Spinnerliedchen (Spinning Song).....		J. Fischer & Bro.....	10/22/23	
Through the Looking Glass.....	L. Carroll.....	J. Fischer & Bro.....	/18	
Valse Ariette (Humming Chorus).....		J. Fischer & Bro.....		

PLAINTIFFS' DEPOSITION EXHIBIT 4

Agreement between Deems Taylor and Society. This exhibit is identical with Exhibit "C" to the Bill of Complaint except for names and dates.

[Vol. 1606]

PLAINTIFFS' DEPOSITION EXHIBIT 5

This exhibit contains a list of approximately 125 copyrighted compositions, of which the words or music were written by Edgar Leslie. Specimen compositions giving the collaborator, the publisher, the date of copyright, are the following:

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Composition	Collaborator/s	Publisher	Copyright Date	Renewed	Remarks
A Little Bit Independent But Easy on the Eyes	Joe Burke	Bregman, Vocco & Conn.	10/22/35		
America I Love You	Archie Gottler	Kalmar Puck & Abrahams Consolidated	9/ 3/15		
Among My Souvenirs	Horatio Nicholls	DeSylva, Brown & Henderson	10/ 5/37		
At A Perfume Counter	Joe Burke	Bregman, Vocco & Conn.	1/27/38		Casa Manana
California and You	Harry Puck	Kalmar Puck & Abrahams Consolidated	4/18/14		
For Me and My Gal	E. Ray Goetz, George W. Meyer	Waterson Berlin & Snyder	1/24/17		
Good Luck Mary	A. Bryan-A. Plantadosi	Dora Cooper	12/16/09	1/26/37-Edgar Leslie	
In A Little Gypsy Tea Room	Joe Burke	Joe Morris Music Co.	5/ 8/35	12/13/37-Al Plantadosi	
It Looks Like Rain in Cherry Blossom Lane	Joe Burke	Joe Morris Music Co.	5/10/37	12/14/37-Edgar Leslie	
Me and the Man in the Moon	Jimmie Monaco	Bregman Vocco & Conn.	11/ 5/28		
Moon over Miami	Joe Burke	Irving Berlin Inc.	12/17/35		
Oh What A Pal Was Mary	Bert Kalmar, Pete Wendling	Waterson Berlin & Snyder	7/ 8/19		
On Treasure Island	Joe Burke	Joe Morris Music Co.	10/ 4/35		
Robins and Roses	Joe Burke	Irving Berlin, Inc.	4/ 3/36		
Romance	Walter Donaldson	Bregman, Vocco & Conn.	12/31/29		
When the Grown Up Ladies Act Like Babies	Joe Young, Maurice Abrahams	Maurice Abrahams Music Co.	10/17/14		
I'm A Yiddish Cowboy	Al Plantadosi, Halsey K. Mohr	Shapiro Bernstein & Co.	4/ 8/08		Cameo Kirby

1/31/36-Al Plantadosi
2/9/36-Edgar Leslie

This exhibit contains a list of approximately 196 copyrighted compositions, of which the music was written by Fred E. Ahlert. These compositions were copyrighted at various dates between 1909 and 1939. Specimen compositions giving the collaborator, if any, the publisher, and the date of copyright, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Remarks
Blue Roses.....	Edgar Leslie.	Irving Berlin, Inc.....	6/26/33	
Evening Star.....	Roy Turk.....	Leo Feist, Inc.....	5/14/28	
Hinky Dinky Dee.....	Van Loan & Robinson.....	Waterson, Berlin & Snyder	/23	
I'd Love to Fall Asleep and Wake Up in My Mammy's Arms	S. Lewis & J. Young.....	Waterson, Berlin & Snyder	4/14/20	
I'm Gonna Sit Right Down and Write Myself a Letter	Joe Young.....	Crawford Music Corp....	5/ 9/35	
Mean to Me.....	Roy Turk.....	DeSylva, Brown & Henderson	2/ 1/29	
Moon Was Yellow, and The Night Was Young	Edgar Leslie.....	Don., Doug. & Gumble, Inc.	6/30/34	
Oh, What A Pal Was Mary.....	Edgar Leslie, Bert Kalmar & P. Wendling	Waterson, Berlin & Snyder	7/ 8/19	
There's A Shadow in the Sunshine of Your Smile	J. Young & C. Lombardo.....	Leo Feist, Inc.....	8/28/35	
Where the Blue of the Night.....	Roy Turk/Bing Crosby.....	DeSylva, Brown & Henderson	10/27/31	

Tightly Bound

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(Here follow 2 photolithographs, side folios 1608-1608a)

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STANDARD UNIFORM POPULAR SONGWRITERS CONTRACT

AGREEMENT made this 27th

day of April

1934, between

BROADWAY MUSIC CORPORATION, 1600 Broadway, New York, N. Y.

Complainant called "Publisher", and JACK EGAN AND ALLAN FLYNN

jointly and/or severally, (hereinafter called "Writer(s)");

WITNESSETH:

1. The Writer(s) hereby sells, assigns, transfers and/or delivers to the Publisher, its successors and assigns, a certain heretofore unpublished original musical composition, written and/or composed by the above named Writer(s) now entitled

"BE STILL MY HEART"

including the title, words and music thereof, and the right to secure copyright therein throughout the entire world, and to have and to hold the said copyright and all rights of whatsoever nature thereunder existing.

2. In all respects this contract shall be subject to any existing agreements between all of the parties hereto and the American Society of Composers, Authors and Publishers.

3. The Writer(s) hereby warrants that the said composition is his sole, exclusive and original work, and that he has full right and power to make the within agreement, and that there exists no adverse claim to or in the said composition, except as claimed in Clause 3 hereof.

4. In consideration of the sum of \$1.00, the Publisher agrees to pay the Writer(s) as follows:

- (a) An advance of \$1.00 in hand paid, receipt of which is hereby acknowledged, which sum shall be deductible from any payments hereafter becoming due the Writer(s) under this agreement.
- (b) In respect of regular piano copies sold and paid for at wholesale in the United States of America, royalties per copy as follows:

Wholesale price 24 cents — — — — — royalty 5 cents per copy.

Wholesale price 21 cents — — — — — royalty 4 cents per copy.

Wholesale price 18 cents — — — — — royalty 3 cents per copy.

Wholesale price 16½ cents (or less) — — — — — royalty 2 cents per copy.

- (c) A royalty of 55 1/3 % (in no case however less than 33-1/3% jointly) of all net sums received by the Publisher in respect of regular piano copies and/or orchestration staves sold and paid for in any foreign country.

- (d) A royalty of three cents per copy of orchestration staves in any form sold and paid for in the United States of America.

- (e) The sum of \$5.00 as and when the said composition is published in any folio or composite work in the United States of America, and \$5.00 when and if published in such form in any foreign country, regardless of the number of copies published, provided however, that the said composition shall in no case be published in such form until one year — — — — — after publication thereof in regular piano copies.

- (f) Folios and/or composite works as referred to in the next preceding paragraph shall be deemed to include any publication of a collection of at least ten or more works contained within the same volume and/or binding.

- (g) For purposes of royalty payments, if a composition is printed and published in the United States of America, as to copies and rights sold in the Dominion of Canada, revenues herefrom shall be considered as of domestic origin. If however, the composition is printed by a party other than the Publisher in the Dominion of Canada, revenues from sales of copies and rights in Canada shall be considered as originating in a foreign country.

- (h) As to "professional master" — not sold or made, no royalty shall be payable.

- (i) An amount equal to 55 1/3 % (in no case, however, less than 33-1/3% jointly) of:—

All receipts of the Publisher in respect of any licenses issued authorizing the manufacture of the parts of instruments serving to mechanically reproduce the said composition, or to use the said composition in synchronization with sound motion pictures, or to reproduce it upon so-called "electrical transcriptions" for broadcasting purposes; and of any and all receipts of the Publisher from any other source or right now known or which may hereafter come into existence, all such sums to be divided amongst the Writer(s) of the said composition, as provided in the next following paragraph hereof.

5. It is understood and agreed by and between all of the parties hereto that all sums hereunder payable jointly to the Writer(s) shall be divided amongst them respectively as follows:

Name:

JACK EGAN

Share:

FIFTY PERCENT

ALLAN FLYNN

FIFTY PERCENT

(Continued Over)

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[fol. 1609] PLAINTIFFS' DEPOSITION EXHIBITS 8-A TO 8-K

Exhibits 8-A to 8-K consist of eleven printed catalogues of various kinds of music currently published by Carl Fischer, Inc. as follows:

Secular choral music consisting of 84 pages.

Catalogue of sacred choral music consisting of 58 pages.

Catalogue of music for organ consisting of 22 pages.

Catalogue of piano music consisting of 80 pages.

Woodwind ensemble and chamber music consisting of 13 pages.

Catalogue of books on music consisting of 68 pages.

Catalogue of music for brass instruments and instruments of percussion consisting of 47 pages.

Catalogue of music for the violin and other string instruments consisting of 100 pages.

Catalogue of vocal music consisting of 48 pages.

Band music catalogue consisting of 102 pages.

Orchestra music catalogue consisting of 142 pages.

In each case the catalogue shows the title of the composition, the name of the author and the price at which the copy of music is sold.

[Vol. 1610]

PLAINTIFFS' DEPOSITION EXHIBIT 9

This exhibit contains a list of approximately 258 copyrighted compositions, of which the lyrics or words were written by Oscar Hammerstein 2nd. Such compositions were copyrighted at various dates between 1920 and 1939. Specimen compositions, giving the collaborator, the publisher, the date of copyright, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Remarks
Can't Help Lovin' Dat Man	Jerome Kern	T. B. Harms Co.	11/30/27	Show Boat
All The Things You Are Are Mine	Jerome Kern	Chappell & Co., Inc.	1939	Very Warm for May
Desert Song	Sigmund Romberg, Otto Harbach & Frank Mandel	Harms Inc.	5/20/27	
Indian Love Call	Rudolf Friml, Otto Harbach	Harms Inc.	9/ 2/24	Rose Marie
Ol' Man River	Jerome Kern	T. B. Harms Co.	11/27/27	Show Boat
One Alone	Sigmund Romberg, Otto Harbach	Harms Inc.	11/20/26	Desert Song
Romance	Sigmund Romberg, Otto Harbach	Harms Inc.	11/ 5/26	Lady Fair
Rose Marie	Rudolf Friml, Otto Harbach, Herbert Stothart	Harms Inc.	2/18/25	
Viennese Nights	Sigmund Romberg	Harms Inc.	7/14/30	

This exhibit contains a list of approximately 410 copyrighted compositions, of which the words or music were written by George W. Meyer. Such compositions were copyrighted at various dates between 1907 and 1938. Specimen compositions giving the collaborator, the publisher, and the date of copyright, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Renewed	Remarks
Anything Is Nice If It Comes from Dixieland	Grant Clarke & Milton Ager	Leo Feist Inc.	2/ 8/19		
Black-Birds		Ascherberg, Hopwood & Crew	10/20/26		Black-Birds
Bring Back My Daddy to Me	William Tracey & Howard Johnson	Leo Feist Inc.	11/26/17		
Brown Eyes Why Are You Blue	Al Bryan	Henry Waterson, Inc.	9/ 9/25		
Come On and Baby Me	Sam M. Lewis/Joe Young	Waterson, Berlin & Snyder Co.	9/ 6/16		
Down Among the Sleepy Hills of Tennessee	Sam M. Lewis/Joe Young	Irving Berlin Inc.	2/28/23		
Everything Is Peaches Down in Georgia	Grant Clarke & Milton Ager	Leo Feist Inc.	7/19/18		
For Baby and Me	Edgar Leslie & E. Ray	B. Feldman & Co.	11/22/26		
For Me and My Gal	Edgar Leslie & E. Ray	Waterson, Berlin & Snyder Co.	1/24/17		
Girl I Left Behind Me	Edgar Leslie/Billy Rose	Famous Music Corp.	7/29/35		
Here Comes the Bride	E. Ray Goetz	Leo Feist Inc.	6/21/19		
I Believe in Miracles	Pete Wendling	Leo Feist Inc.	12/27/34		
If He Can Fight Like He Can Love	Grant Clark & Howard E. Rogers	Leo Feist Inc.	4/30/18		
Love Good-Night Germany		Maurice Richmond Mus. Co.	4/ 1/16		
Just A Girl of Yesterday					
Just Like Washington Crossed the Delaware	Howard Johnson	Leo Feist Inc.			3/29/18
Let's All Be American Now	Irving Berlin & Edgar Leslie	ABC Standard Music	2/17/17		
Lonesome		F. A. Mills	1/ 2/09		Famous Music 1/4/36
My Tucky Home	Sam M. Lewis/Joe Young	Irving Berlin Inc.	11/14/23		
Sittin' in a Corner	Gus Kahn	Irving Berlin Inc.	8/16/23		
Tuck Me to Sleep in My Old Kentucky Home	Sam M. Lewis/Joe Young	Irving Berlin Inc.	8/ 6/21		
When You're a Long Way from Home	Sam M. Lewis	Broadway Music Corp.	7/17/14		

Tightly Bound

[fol. 1612] PLAINTIFFS' DEPOSITION EXHIBIT 11

Articles of Association of the Society. This exhibit is identical with Exhibit "D" to the Bill of Complaint.

[fol. 1613] PLAINTIFFS' DEPOSITION EXHIBIT 12

Laws of New York.—By Authority

Chapter 609

An Act to amend the general associations law, in relation to proceeding to mortgage, lease or sell real estate, and action or proceeding by unincorporated association

Became a law April 2, 1932, with the approval of the Governor. Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section eight of chapter thirty-four of the laws of nineteen hundred nine, re-entitled by chapter nine hundred and fifteen of the laws of nineteen hundred twenty, "An act in relation to associations, constituting chapter twenty-nine of the consolidated laws," is hereby amended to read as follows:

§ 8. Proceeding to mortgage, lease or sell real estate. Whenever any unincorporated association is required by law to make application to the court for leave to mortgage, lease or sell its real estate, the proceeding therefor shall be had as prescribed for corporations in article five of the general corporation law.

§ 2. Section twelve of such chapter as added by chapter nine hundred and fifteen of the laws of nineteen hundred twenty is hereby amended to read as follows:

§ 12. Action or proceeding by unincorporated association. An action or special proceeding may be maintained, by the president or treasurer of an unincorporated association to recover any property, or upon any cause of action, for or upon which all the associates may maintain such an action or special proceeding, by reason of their interest or ownership therein, either jointly or in common. An action may

likewise be maintained by such president or treasurer to recover from one or more members of such association his or their proportionate share of any moneys lawfully expended by such association for the benefit of such associates, or to enforce any lawful claim of such association against such member or members.

§ 3. This act shall take effect immediately.

[fol. 1614] PLAINTIFFS' DEPOSITION EXHIBIT 13

List of members of the Society and affiliated foreign societies. Same as exhibit "Q" to the Further Supplemental Bill of Complaint.

[fol. 1615] PLAINTIFFS' DEPOSITION EXHIBIT 14

American Society of Composers, Authors and Publishers
Thirty Rockefeller Plaza
New York City

May 17, 1939.

I, the undersigned, do hereby certify that at a regular meeting of the Board of Directors of the American Society of Composers, Authors and Publishers, a voluntary association organized and existing under the laws of the State of New York, held on January 26th, 1939, a quorum being present, the following resolutions were adopted and that the said resolutions have been entered upon the regular Minute Book of the said Society and in accordance with the Articles of Association which are now in full force and effect.

Resolved, that Gene Buck, as President of this Society, be and he hereby is authorized and empowered to institute in any court in the United States for and on behalf of this Society any and all actions or proceedings upon any cause of action, for or upon which this Society may maintain such an action or proceeding, including all actions or proceedings to recover damages and/or profits arising out of and/or to enjoin the infringement by means of public performances for profit of musical compositions composed or copyrighted by members of this Society, and any and all actions or proceedings to enforce any and all contracts between this Society and third parties and to collect royalties or any other amounts that may be due to this Society

thereunder, and he hereby is authorized and empowered to verify for and on behalf of this Society any and all petitions, complaints and other process where such verifications are necessary or proper with reference to all such actions or causes of action.

Further Resolved, that this Board of Directors does hereby ratify, confirm and approve the institution, commencement, and prosecution of all actions, suits and proceedings now pending in any court in the United States on behalf of this Society wherever such actions, suits and proceedings have been instituted in the name of "Gene Buck, as President of the American Society of Composers, Authors and Publishers" for whatsoever cause.

In Witness Whereof I have hereunto set my hand as Secretary, and affixed the seal of the Society this 17th day of May, 1939.

George W. Meyer, Secretary.

Attest: — — —, President.

[fol. 1615a] PLAINTIFFS' DEPOSITION EXHIBIT 15-M.

AGREEMENT

BETWEEN

THE PERFORMING RIGHT SOCIETY LIMITED

AND

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

January 6th, 1933.

[fol. 1616] AGREEMENT made the sixth day of April, 1933, between

THE PERFORMING RIGHT SOCIETY LIMITED, of Chatham House, 13 George Street, London, England, hereinafter designated as "PRS", and

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, of 1501 Broadway, New York, N. Y., United States of America, hereinafter designated as "ASCAP", as follows:

I

PRS hereby grants to ASCAP the exclusive right to license in the United States of America, Alaska, Porto Rico,

Philippine Islands, Virgin Islands, Hawaii, and its Colonies and Possessions, the non-dramatic public performance for profit, of musical works the performing rights of which are now or may during the term hereof be vested in or controlled by PRS. Symphonic and similar concert works are, however, expressly excluded, and it is understood that PRS or its members concerned are at liberty to collect independently fees for the performance of such works in the beforementioned territory.

[fol. 1617]

II

ASCAP hereby grants to PRS the exclusive right to license in Great Britain, Northern Ireland, selfgoverning British Dominions (exclusive of Canada, Newfoundland, Australia and New Zealand) and Colonies, Dependencies, Protectorates and mandated territories, the non-dramatic public performances of musical works the performing rights of which are now or may during the term hereof be vested in or controlled by ASCAP.

III

The terms "public performance for profit" and "public performance" hereinbefore used, shall be construed to mean vocal, instrumental and/or mechanical performances and representations in any manner or by any method whatsoever, including performance by radio broadcasting stations, by telephony and/or "Wired Wireless"; and/or reproductions of non-dramatic performances by means of devices for reproducing sound recorded in synchronisation or timed relation with motion pictures, provided however, that in the case of dramatic-musical works, musical plays, operas, operettas, musical comedies and works of a similar character, such performances shall be limited to the separate numbers, fragments or arrangements, melodies or selections forming a part or parts thereof, and shall not [fol. 1618] include the right of public performance of such works in their entirety or of any part thereof as stage plays, or as a part of stage plays, all of which rights, including all other rights not in this agreement expressly enumerated, are hereby reserved and retained to their members by ASCAP and PRS respectively, and by the respective composers, authors and publishers of such musical works.

IV

Each of the parties hereto agrees to require of and collect from its licensees, for the public performance of the musical works referred to in Clauses I and II hereof, payment therefor upon the same basis and in the same manner as is now in force and effect between each Society and its respective licensees with respect to the musical works referred to in Clauses I and II hereof, and that each Society will account for and pay over to the other such monies in respect of the public performance of such musical works as is hereinafter provided.

V

Each of the parties hereto shall account to the other for each calendar year during the term hereof on or before each 30th September succeeding the close thereof.

[fol. 1619]

VI

A. The net sum allocable by PRS in respect of the musical works referred to in Clause II hereof shall be ascertained in accordance with the present practice of PRS or any modification thereof which may be made from time to time, and shall be divided and paid in the following manner:

B. One-half of the sum in respect of each work shall be the share of the writers thereof, (composers and authors). Such share shall be divided between the writers, and the shares of such writers as are members of ASCAP shall be paid by PRS to ASCAP in accordance with the present practice of PRS. The remaining half of the sum in respect of each work shall be the share of the publisher thereof and shall be paid to the publisher member of PRS who represents in Great Britain the American publisher of the work. In the case of ASCAP publisher-members who are not so represented the share shall be paid to ASCAP for credit of such ASCAP publishers. The payments by PRS under this agreement shall be accompanied by a list of the works performed according to the returns received from PRS licensees, showing the amount allocated in respect of each work, and shall be subject to deduction therefrom of such [fol. 1620] amount as may be assessed against them on account of taxes payable to the Government.

VII

A. ASCAP agrees during the term hereof to use its best endeavors to gather daily data covering completely the musical programs as rendered by the two principal broadcasting networks in the U. S. A. (National Broadcasting Company and Columbia Broadcasting System respectively, or their successors), together with similar data regarding the musical programs rendered by a selected number of independent broadcasting stations not affiliated with either of said networks but located in various sections throughout the entire country.

B. From such program data, as rendered by the said networks and stations, ASCAP undertakes to prepare annually and furnish to PRS a summary which shall show the total number of broadcast performances of works identifiable in such programs as from the entire repertoire of PRS.

C. Identifiable copyrighted works listed on the programs gathered in accordance with paragraph A hereof shall be given one point credit for each performance. Points in respect of works (other than those referred to in sub-paragraph E hereof) shall be credited to the respective ac-[fol. 1621] counts of:

1. The repertoire of ASCAP.
2. The repertoire of each foreign performing right Society with which ASCAP may have reciprocal relations, or act for it as agent.
3. The repertoire of each foreign country with which ASCAP may have no relationship.
4. Works not identifiable with any of the above mentioned repertoires.
5. Works of United States origin copyrights of which are owned by non-members of ASCAP.

Points in respect of works referred to in Paragraph E hereof shall be divided equally between the repertoires of ASCAP and PRS.

D. From the total number of points so credited under headings one (1.) and two (2.) above there shall be computed the proportion thereof contributed by the repertoire of PRS, and the amount due to PRS from ASCAP each

year during the term hereof shall be exactly in proportion as the number of its points in relation to the total number of points credited under headings one (1.) and two (2.) above bears to the distributable net revenue of ASCAP during the same period.

E. Where a member of PRS has assigned the United States copyright in a work to a publisher member of ASCAP without any reservation of an interest in performing rights no credit shall be entered to the account of the publisher member of PRS in respect of performances [fol. 1622] thereof but in such case and under all circumstances the share of one half for writer members of PRS (composers, authors and arrangers) in respect of such works, when identifiable, shall be paid to PRS for credit of such writer members. If however the assignment of copyright is subject to the reservation by the member of PRS of any interest in the performing rights in the work, in such event ASCAP shall credit performances thereof to the PRS repertoire exclusively and PRS shall after making its final analysis of the summary and data to be furnished by ASCAP under sub-paragraphs A and B hereof, remit to ASCAP for the account of its publisher member such share in the fees credited to each such work as shall be due to him, accompanied by a detailed statement of all such items.

F. PRS undertakes within sixty days from the execution of this agreement to furnish to ASCAP a complete list, and subsequently during the term hereof to make thereto such additions as may be from time to time necessary, showing the title, name of composer and/or author and publisher of each work the United States copyright of which has been by a member of PRS assigned to a member of ASCAP subject to the reservation of an interest in the performing rights in the work.

[fol. 1623] G. If at any time during the term of this agreement ASCAP shall be unable to secure such daily data as is described in Paragraph A hereof, it shall promptly notify PRS to that effect whereupon at its option PRS may terminate this agreement at the termination of the then current year, and at its option for such year shall be paid either in accordance with the formula provided in sub-paragraphs C and D hereof to the extent that such data

has been obtained, or the sum of \$25,000.00 in full settlement.

H. On or before the 30th day of September following the close of each year of the term hereof ASCAP shall furnish to PRS the statements provided for in sub-paragraph B hereof, accompanied by remittance of such amount as shall under the formula (provided in sub-paragraphs C and D hereof) be shown as due to PRS after deducting therefrom only such amount as may be assessed against it on account of taxes payable to the Federal, State or Municipal Government.

I. Supplemental to and in support of the data prepared in accordance with sub-paragraphs A, B and C hereof, and the statements in accordance with sub-paragraph H to be furnished by ASCAP to PRS, there shall also be despatched at the same time all the original programs from which the [fol. 1624] data contained in the statements was compiled. PRS shall be entitled to retain possession of such original programs for a period of not less than sixty days from the receipt thereof, and upon request of ASCAP shall then forward the same complete as received, carrying charges prepaid, as may be directed by ASCAP.

J. Inasmuch as ASCAP will receive such original programs in strict confidence from the sources, and will covenant that no disclosure of the contents thereof shall be made to any copyright owner whose works are not embraced under the licenses issued by ASCAP, it is of the essence of this agreement, and PRS agrees, that it will not divulge or expose the contents of such original programs to any but its members and then permit only a personal inspection, and that under no circumstances will it permit any copies thereof or of any of the particulars thereof to be made and removed from its files and premises.

VIII

Each of the parties hereto grants to the other the rights and licenses set forth in Clauses I and II hereof, subject always, however, to any right of the author, composer or publisher of any musical work to remove any musical work from the repertory of such respective party and/or to revoke, modify or limit any performing right which he or it

may have granted to such party, to the extent to which any [fol. 1625] such composer, author or publisher may have the right so to do, and in the event of any such removal, revocation, modification or limitation each of the parties hereto shall give to the other immediate notice thereof.

IX

This contract is declared to be personal with respect to each of the parties hereto and neither party shall assign the same or any rights therein granted or arising therefrom, without the written consent of the other party first had and obtained, except insofar as each party shall have the right to issue licenses for the giving of public performances of the musical works contained in the repertoire of the other party. Nor shall this contract be deemed to be assignable by operation of law, devolution or legal proceedings.

X

Each of the parties hereto hereby irrevocably during the term of this contract authorizes, empowers and vests in the other party the right, in the name of the grantor or in the name of the grantee, or in the name of the owner of the copyright or copyrights of any musical work coming within the purview of this agreement to institute and prosecute actions to retain and recover damages for the infringement [fol. 1626] or violation of the rights granted to the grantee under this contract, and to release, compromise or refer to arbitration, in the grantee's discretion, any and all actions in the same manner and to the same extent and to all intents and purposes as the grantor and/or the owners of the copyright of such musical work might or could do. And each of the parties hereto hereby makes, constitutes and appoints the other party its true and lawful attorney irrevocably during the term of this agreement, in the name of the grantor or in the name of the grantee, or in the name of the owner of the copyright or copyrights of any musical work to do all acts, take all proceedings and execute, acknowledge and deliver any and all instruments and documents that may be necessary, proper or expedient and recover damages, under the copyright of such musical works or otherwise, for the infringement or other violation of the rights hereby granted in such works, and to release, com-

promise and refer to arbitration any such proceedings or actions or to make any other dispositions of differences in relation to the premises.

[fol. 1627]

XI

Each party hereto shall supply the other as far as possible with any particulars relating to the musical works in their respective repertoires which may be necessary in their mutual interests.

XII

Each of the parties hereto agrees, during the term hereof, to execute, acknowledge and deliver to the other party such assurances, powers of attorney or other authorities or instruments as may be deemed necessary or expedient by such party to enable it to exercise and enforce its own name, or otherwise, all the rights, remedies and privileges granted to it under this contract.

XIII

Each of the parties hereto agrees that it will not accept into membership any composer, author or publisher, who is a member of the other Society at the time when this agreement is made or who shall become a member of the other Society during the term hereof, and who has granted as to ASCAP his rights also for the territory named in Clause II hereof, and as to PRS the territory named in Clause I hereof, unless the other Society shall consent thereto in writing. That it will not represent in any manner during the [fol. 1628] term hereof, any other organization or Society resident in the said territories respectively having purposes or objects similar to those of either of the parties hereto.

XIV

Each of the parties hereto shall have the right to appoint in writing a representative, to take up in its behalf and examine into, during customary business hours, any matter arising in respect of the relations covered by this agreement.

XV

This agreement shall be effective as of the 1st —, 1933, and shall continue indefinitely thereafter subject to the right of either party by written notice served upon the other

before 30th September of any year to terminate the agreement as at the end of the then current year. In the event of any such termination by either party hereto, the parties shall account each to the other in full and according to the terms hereof covering all operations for that year.

[fol. 1629] In Witness Whereof the parties hereto have caused these presents to be signed by their respective duly authorized officers and their respective seals hereunto affixed the day and year first above written.

American Society of Composers, Authors and Publishers, by Gene Buck, President.

Attest: Joseph Young, Secretary.

The Performing Right Society Limited, by Leslie A. Boeey, John Abbott, Directors; C. H. Hatchman, Secretary.

[fol. 1630] PLAINTIFFS' DEPOSITION EXHIBITS 15-A TO 15-T,
EXCLUSIVE OF 15-M

These are copies of contracts between the Society and the societies of the following countries:

Yugoslavia
Switzerland
Sweden
Spain
Rumania
Portugal
Norway
Italy
Hungary
Germany

France
Finland
Denmark
Czechoslovakia
Bulgaria
Belgium
Brazil
Austria
Argentina

and the terms and provisions of these contracts are substantially the same as set out in plaintiffs' Exhibit 15-M.

[fol. 1631]

PLAINTIFFS' DEPOSITION EXHIBIT 16**List of Broadcasting Stations Operated by
Non-Commercial Establishments****Licensed to Perform Music Copyrighted by Members of
American Society of Composers, Authors and Publishers**

Call		City
KFGQ.....	Boone Biblical College.....	Boone, Iowa
KFKU.....	University of Kansas.....	Lawrence, Kansas
KOAC.....	State Agricultural College.....	Corvallis, Ore.
KPPC.....	Pasadena Presbyterian Church.....	Pasadena, Calif.
KSAC.....	State Agricultural College.....	Manhattan, Kansas
KTW.....	First Presbyterian Church.....	Seattle, Wash.
KUSD.....	University of South Dakota.....	Vermillion, S. D.
KWLC.....	Luther College.....	Decorah, Iowa
WBAA.....	Purdue University.....	Lafayette, Ind.
WBBR.....	Peoples Pulpit Association.....	Brooklyn, N. Y.
WCAD.....	St. Lawrence University.....	Canton, N. Y.
WCAL.....	St. Olaf College.....	Northfield, Minn.
WCAT.....	State School of Mines.....	Rapid City, S. D.
WHA.....	University of Wisconsin.....	Madison, Wisc.
WILL.....	University of Illinois.....	Urbana, Ill.
WKAR.....	Michigan State College.....	E. Lansing, Mich.
WLB.....	University of Minnesota.....	Minneapolis, Minn.
WLBL.....	State of Wisconsin Dept. of Agriculture.....	Stevens Point, Wis.
WMBI.....	Moody Bible Institute.....	Chicago, Ill.
WNAD.....	University of Oklahoma.....	Norman, Okla.
WNYC.....	City of New York.....	New York City
WOI.....	State College of Agriculture.....	Ames, Iowa
WOSU.....	Ohio State University.....	Columbus, Ohio
WSAJ.....	Grove City College.....	Grove City, Pa.
WSUI.....	University of Iowa.....	Iowa City, Iowa
WSVS.....	Seneca Vocational High School.....	Buffalo, N. Y.
WCNY.....	The Board of Education of the City of N. Y.....	New York, N. Y.
KFDY.....	South Dakota State College of Agriculture and Mechanic Arts.....	Brookings, S. D.

[fol. 1632]

**PLAINTIFFS' DEPOSITION EXHIBITS
17-A to 17-P.**

These exhibits consist of 16 contracts of the Society with various Florida Radio Stations, one of which is the contract with Isle of Dreams Station at Miami, Florida, copied as Exhibit "F" to the Bill of Complaint. Except as noted below these contracts are all identical in form with Exhibit "F" of the Bill of Complaint.

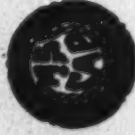
17-B—The contract with Municipal Broadcasting Station WJAX, owned by the city of Jacksonville, differs from Exhibit "F" to the Bill of Complaint in that this municipal station is not required to pay any sustaining fee.

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(Here follows 3 Photolithographs, side folios 1633, 1634,
1634-a)

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PLAINTIFFS' DEPOSITION EXHIBIT 17-L
AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
 THIRTY ROCKEFELLER PLAZA
 NEW YORK CITY



January 15, 1936

Tampa Publishing Company
 Radio Station W.D.A.E.
 Tampa, Florida

Gentlemen:

It is mutually agreed that the certain license agreement between us, dated October 8, 1932, effective October 1, 1932, is hereby extended on the same terms and conditions as therein contained, from the date of its present expiration, up to and including December 31, 1940; except that Article 7 of such license is hereby amended so as to read:

...of musical numbers, the performing rights of which are licensed under this agreement, then the Licensee shall have the right to terminate this license upon three days' notice by registered mail, addressed to the Society, and this right shall be the sole and exclusive remedy.

The Society reserves the right, at any time, and from time to time, to withdraw from the operation of this license, any musical number or numbers. Upon any such withdrawal the Licensee may immediately terminate this license by giving written notice of its election so to do to the Society.

In the event of any such termination of this License, pursuant to Articles 5 and/or 7 hereof, the Society shall refund to the Licensee pro rata license fees, if any, paid for a period beyond the date of such termination.

ACCEPTED:

Radio Station W.D.A.E.

By *W.D.A.E. Chandler*, Title

Dated *January 15, 1936*

Very truly yours,
 AMERICAN SOCIETY OF COMPOSERS
 AUTHORS AND PUBLISHERS

By *Norman Humberg*

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1006A

MEMORANDUM OF AGREEMENT between AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS, (hereinafter styled "SOCIETY"), and

TAMPA PUBLISHING COMPANY

(hereinafter styled "LICENSEE"), conducting a radio broadcasting station 51% or more owned and operated by a daily newspaper, as follows:

1. SOCIETY grants to LICENSEE, and LICENSEE accepts for a period of three (3) years from October 1, 1932, a license to publicly perform by broadcasting from Radio Station W. D. A. E., located at Tampa, Florida

non-dramatic renditions of the separate musical compositions heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY, or of which SOCIETY shall have the right to license such performing rights.

2. The within license does not extend to or include the public performance by broadcasting or otherwise of any rendition or performance of any opera, operetta, musical comedy, play or like production, as such, in whole or in part.

3. Nothing herein contained shall be construed as authorizing LICENSEE to grant to others any right to reproduce or perform publicly for profit by any means, method or process whatsoever, any of the musical compositions coming within the purview of the within license performed pursuant hereto, or as authorizing any receiver of any such broadcast rendition to publicly perform or reproduce the same for profit by any means, method or process whatsoever.

4. The within license is limited to the separate musical compositions heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY, or of which SOCIETY shall have the right to license the performing rights heretofore or hereafter granted, in programs rendered at or from said radio station, or at or from any other place duly licensed by SOCIETY to perform such works (within the performance obligations as a licensee of said radio station, which SOCIETY does not guarantee), from which place rendition of such works

It is understood, however, that LICENSEE shall be guilty of a breach under this Article (No. 4) only in the event that it continues to broadcast a program rendered at such place other than the said station after LICENSEE shall have received notice from SOCIETY that such other place is not licensed by SOCIETY in performance.

5. The within license is granted upon the express conditions:

(a) That should the power input as at present authorized by the Federal Radio Commission for the said station (2,000 watts) be changed during the term hereof, the basic fee as provided in the first paragraph of Article No. 8 hereof shall be adjusted.

(b) That in event the license of said station from the Federal Radio Commission is terminated, cancelled, revoked or suspended, or in the event that radio broadcasting is suspended from other sources or operated by other than private interests, than as now provided, LICENSEE shall promptly notify SOCIETY thereof, and either SOCIETY or LICENSEE may then terminate this agreement; and in such event, LICENSEE shall be under no further liability to SOCIETY for the payment of any license fee hereunder; provided, however, that if the license of said station to broadcast is suspended for a period less than the term of the within license, then in such event LICENSEE shall be relieved from payment of the license fee hereunder only during such period of suspension.

6. LICENSEE agrees upon request to furnish to SOCIETY during the term of the within license a list of all musical compositions (or, at the option of LICENSEE, a list of all musical compositions heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY or of which SOCIETY shall have the right to license the performing rights heretofore or hereafter granted) broadcast from or through the said station, showing the title of each composition and the composer and/or author thereof; provided that LICENSEE shall not be obligated under this Article No. 6 to furnish such a list covering a period or periods in the aggregate during any one calendar year in excess of three months. The list so furnished by LICENSEE to SOCIETY shall be strictly confidential and SOCIETY covenants that it will make no disclosure thereof or of the contents thereof.

7. SOCIETY agrees during the term hereof to maintain for the service of LICENSEE substantially the present catalogue of compositions heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY. SOCIETY reserves the right, however, at any time and from time to time to withdraw from its inventory and from operation of the within license any musical composition or compositions; and upon any such withdrawal, LICENSEE may immediately cancel the within agreement by giving written notice to SOCIETY of its election so to do.

In the event of any such cancellation by LICENSEE, or in the event of a termination of this agreement and the within license pursuant to the provisions of Article No. 5 hereof, or otherwise, SOCIETY shall refund to LICENSEE pro rata license fees, if any, paid for a period beyond the date of such cancellation or termination.

8. Under the terms and conditions heretofore set forth, LICENSEE agrees to pay to SOCIETY, as compensation for the within license, the sum of FIVE HUNDRED and 00/100

per annum, payable in equal monthly installments on or before the 15th of each month during the term hereof, during each year of the term hereof, a sum equal to three percent (3%) of the gross amount of receipts of LICENSEE from the sale of broadcasting facilities for programs in which music copyrighted or rendered by members of SOCIETY is rendered, until such receipts shall have reached the total sum of FIFTY-FIVE THOUSAND and 00/100 (\$25,000.00) Dollars; and five percent (5%) of all such receipts in excess of the foregoing amount.

It is, however, understood and agreed that in no event shall the total aggregate sum payable to LICENSEE in any one calendar year of the term hereof be less than \$20 THOUSAND and 00/100 (\$20,000.00) Dollars, and the deficit, if any, of such total aggregate sum in respect of any single year to the last stated amount shall be paid within sixty days of the receipt by LICENSEE from SOCIETY of a bill covering such deficit.

Permitted, however, that gross receipts of the Licensee in respect of all commercial ("spot") announcements other than those of the Licensee or of the Licensee's subsidiary or of the Licensee's subsidiary's subsidiary shall be subject to percentage payments as hereinafter provided. Public service announcements such as those mentioned above, and other announcements, including but not limited to, announcements of political conventions, civic gatherings, parades, public functions and sports events, such as football and baseball games, as to music played during such events, shall be exempt from such percentage payments, as shall also be broadcasts of political conventions, civic gatherings, parades, public functions and sports events, such as football and baseball games, as to music played during such events. Nor shall any percentage be payable to Society in respect of service charges connected with the transmission of a non-commercial program from a remote control point to the studio of Licensee.

LICENSEE shall render monthly statements to SOCIETY on or before the 10th of each month covering the period of the preceding calendar month on forms supplied gratis by SOCIETY, and shall include in such statement all gross receipts, without exception, during the said month from the sale of the broadcasting facilities (time on the air) of the said station for programs wherein any music copyrighted or composed by members of SOCIETY shall have been included. Which said statement shall be rendered under oath and accompanied by the statement due SOCIETY under the terms hereof. Any such statement may also include a deduction by or credit to the LICENSEE for any amount reported by it as received during a prior month from the sale of its broadcasting facilities for which it has been compelled to refund as a "time discount." In the event that any such item shall be collected after it has been credited or deducted as aforesaid, it shall then be included again in the next receipts of LICENSEE on the monthly statements next succeeding the date of the actual collection.

9. SOCIETY shall have the right, by its duly authorized representative, at any time during customary business hours, to examine the books and records of accounts of LICENSEE only to such extent as may be necessary to verify any such monthly statement of accounting as may be rendered pursuant hereto; provided that such examination does not interfere with the usual conduct of business by LICENSEE.

It is understood and agreed that SOCIETY shall consider all data and information coming to its attention as a result of any such examination of books and records as completely and entirely confidential.

10. Upon any breach or default of any terms herein contained, SOCIETY may give LICENSEE ten (10) days notice in writing to repair or correct such breach or default; and in the event that such breach or default has not been repaired or corrected within said ten (10) days, SOCIETY may then forthwith cancel said license.

11. SOCIETY agrees to indemnify, save and hold LICENSEE harmless, and defend LICENSEE from and against any claim, demands or suits that may be made or brought against the LICENSEE with respect to rendition of its services during the term hereof in accordance with this license of musical compositions contained in SOCIETY'S repertory hereafter or hereafter during the term hereof copyrighted or composed by members of SOCIETY.

In the event of the service upon LICENSEE of any notice, process, paper or pleading, under which a claim, demand or action is made or begun against LICENSEE on account of any such matter as is hereinabove mentioned, LICENSEE shall have the right to engage counsel of its own, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for SOCIETY shall cooperate. LICENSEE shall cooperate with SOCIETY in every way in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, briefs or other instruments, but at the sole expense of SOCIETY, that may be required in order properly to defend and resist any such action or proceeding, and properly to prosecute any appeals taken therein.

In the event of the service upon LICENSEE of any notice, process, paper or pleading, under which a claim, demand or action is made, or begun against LICENSEE on account of the rendition of any musical compositions contained in the SOCIETY'S repertory but NOT herebefore or hereafter during the term hereof copyrighted or composed by members of SOCIETY, SOCIETY agrees at the request of LICENSEE to cooperate with and assist LICENSEE in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein.

12. In the event of any change in the ownership or control of the said station whereby it becomes less than 51% directly owned and controlled by the LICENSEE, SOCIETY may, at its option, cancel and terminate this license upon 30 days' written notice.

13. All notices required or permitted to be given by either of the parties to the other hereunder shall be duly and properly given if mailed to such other party by registered United States mail addressed to such other party at its main office for the transaction of business.

IN WITNESS WHEREOF, this agreement has been duly subscribed by SOCIETY and LICENSEE this 8th day of October, 1958



AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

TAMPA PUBLISHING COMPANY
Licensee.

By OB McKay

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PLAINTIFFS' DEPOSITION EXHIBIT 18

Florida

Radio Contracts in Effect as of 6/9/37

Date of Contract	Licensee	Call	Location	Annual Sustaining Fee
9/20/32	Isle of Dreams Broadcasting Corp...	WIOD	Miami Beach	1,000.00
10/ 3/32	University of Florida.....	WRUF	Gainesville	—
9/16/32	Orlando Broadcasting Co. Inc.....	WDBO	Orlando	600.00
9/20/32	Miami Broadcasting Company.....	WQAM	Miami	1,000.00
10/ 8/32	Tampa Publishing Company.....	WDAE	Tampa	500.00
11/18/32	Clearwater Chamber of Commerce and St. Petersburg Chamber of Commerce.....	WFLA WSUN	Clearwater	—
4/20/33	Pensacola Broadcasting Co. Inc....	WCOA	Pensacola	400.00
8/ 8/34	Florida Broadcasting Company....	WMBR	Jacksonville	500.00
8/27/36	W. Wright Esch.....	WMFJ	Daytona Beach	100.00
8/20/35	Florida Capitol Broadcasters, Inc...	WTAL	Tallahassee	100.00
4/ 7/36	Mr. J. P. Marchant.....	WLAK	Lakeland	100.00
6/24/36	Haselwood, Incorporated.....	WJNO	W. Palm Beach	100.00
2/24/37	Fountain of Youth Properties, Inc...	WFOY	St. Augustine	100.00

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PLAINTIFFS' DEPOSITION EXHIBIT 19

Florida

Radio Contracts in Effect as of 6/12/39

Date of Contract	Licensee	Call	Location	Annual Sustaining Fee
9/20/32	Isle of Dreams Broadcasting Corp...	WIOD	Miami Beach	1,000.00
10/ 3/32	University of Florida.....	WRUF	Gainesville	—
9/16/32	Orlando Broadcasting Co. Inc.....	WDBO	Orlando	600.00
9/20/32	Miami Broadcasting Company.....	WQAM	Miami	1,000.00
10/ 8/32	Tampa Publishing Company.....	WDAE	Tampa	500.00
11/18/32	St. Petersburg Chamber of Com- merce.....	WSUN	St. Petersburg	—
6/30/38	Florida West Coast Broadcasting Co. Inc.....	WFLA	Tampa	500.00
4/20/33	Pensacola Broadcasting Co. Inc....	WCOA	Pensacola	400.00
8/ 8/34	Florida Broadcasting Company....	WMBR	Jacksonville	500.00
4/ 7/36	Mr. J. P. Marchant.....	WLAK	Lakeland	100.00
6/24/36	WJNO Incorporated.....	WJNO	W. Palm Beach	100.00
2/24/37	Fountain of Youth Properties, Inc...	WFOY	St. Augustine	100.00
9/ 2/38	A. Frank Katzentine.....	WKAT	Miami Beach	300.00
9/ 6/38	City of Jacksonville, Florida.....	WJAX	Jacksonville	—

PLAINTIFFS' DEPOSITION EXHIBIT 20

Florida

Motion Pictures in Effect as of 6/9/37

Acct. No.	Date of Contract	Licenses	Name of Theatre	Location	Seating Capacity	Annual Fee
1-1	9/15/33	R. L. Bailey	Eagle	Blountstown	275	\$ 27.50
1-2	5/1/36	Earl M. Fain	Bushnell	Bushnell	210	21.00
1-3	12/15/34	J. Carbonell & J. Fleitas	Monroe	Key West	540	54.00
1-4	1/10/34	A. Dobrow	Everglades	Belle Glade	403	40.30
1-6	6/5/35	Publix Seenger, Sparks Theatres, Inc.	Ritz	Ocala	817	122.55
1-7	5/5/34	J. M. McKinney	Princess	Cross City	200	20.00
1-9	12/25/33	W. R. Drollinger	Park	S. Jacksonville	350	35.00
1-10	10/1/34	Melbourne Theas., Inc.	Van Croix	Melbourne	690	68.00
1-12	8/18/35	Roy Martin	Columbia	Lake City	400	40.00
1-13	12/1/30	J. C. & C. F. Hancock	New Lyric	Stuart	600	60.00
1-14	1/1/35	Midland Theatres, Inc.	Palace	Lakeland	1058	158.70
1-15	1/10/34	A. Dobrow	Prince	Palokee	270	27.00
1-16	3/10/35	Paramount Enterprises, Inc.	Coral Gables	Coral Gables	1102	165.30
1-17	11/26/36	Midland Theatres, Inc.	Strand	Lakeland	508	50.80
1-18	10/14/36	Vee Bee Theatres, Inc.	Florida	Vero Beach	808	121.20
1-19	11/30/33	Manatee Theatres, Inc.	Palmetto (Formerly New)	Palmetto	245	24.50
1-20	1/10/34	Dick Scaglione	Plaza	Ybor City	400	40.00
1-21	5/12/34	Marty Hayes Davis	Dixie Crystal	Clewiston	260	26.00
1-22	7/16/35	Manatee Theatres, Inc.	Palace	Bradenton	979	146.85
1-23	1/1/35	Paramount Enterprises, Inc.	Rex	Miami	997	149.55
1-24	10/5/26	Wolfson-Meyer Theatre Enterprises, Inc.	Grand	W. Palm Beach	509	50.90
1-25	10/17/35	Clarence Manleg	Graceville	Graceville	275	27.50
1-26	1/1/35	Paramount Enterprises, Inc.	Paramount	Miami	1491	223.65
1-27	10/6/34	Pinellas Theatres, Inc.	Alcazar	St. Petersburg	1700	340.00
1-28	11/25/34	Pinellas Theatres, Inc.	La Plaza	St. Petersburg	1075	161.25
1-29	9/27/34	Tallahassee Enterprises, Inc.	State	Tallahassee	799	79.90
1-30	7/1/28	Jefferson Co.	Jefferson	St. Augustine	543	54.30
1-31	1/1/33	Panama Theatre, Inc.	Panama	Panama City	1114	167.10
1-32	11/4/34	Ketapara Theatre, Inc.	Florida (Formerly Kettler)	W. Palm Beach	542	54.20
1-33	6/1/35	Hollywood Amusement, Inc.	Ritz (Formerly Hollywood)	Hollywood	400	20.00
1-34	10/17/34	E. A. Crane	Ritz	Daytona Beach	825	133.75
1-35	2/24/35	Casino Enterprises, Inc.	Ritz	Tampa		

1-37	11/26/34	Edw. J. Freiwald	Fry-Wald	Nieville	10.00
1-38	5/1/31	Illegible	Dixie	Apalachicola	45.00
1-39	11/26/34	Halifax Theatres, Inc.	Empire	Daytona Beach	190.65
1-41	8/28/36	Midland Theatres, Inc.	Ritz	Bartow	66.10
1-42	11/23/36	Marianna Theatres, Inc.	Ritz	Panama City	810
1-43	7/1/28	Orlando Enterprises	Arcade	Ft. Myers	67.00
1-44	7/1/35	Publix Saenger, Sparks Theatres, Inc.	Ritz (Formerly Milane)	Sanford	120.60
1-45	11/28/34	Orlando Enterprises, Inc.	Grand	Orlando	72.30
1-46	11/24/34	Gulf Theatres, Inc.	Roxy (Formerly Nebraskas)	Sulphur Springs	47.90
1-47	11/24/34	Gulf Theatres, Inc.	Garden	Tampa	872
1-48	4/1/28	Publix-Saenger-Sparks Theatres, Inc.	Lyric	Gainesville	582
1-49	9/1/35	Roxy Theatre	Roxy	Greenville	177
1-50	12/25/34	Illegible	Arcade	Jacksonville	17.70
1-51	11/1/30	Biltmore Theatres, Inc.	Biltmore	Jacksonville	1134
1-52	1/1/35	Duval Amusements, Inc.	Palace	Buena Vista (Now Miami)	64.90
1-53	8/18/35	Roy Martin	De Soto	Jacksonville	370.00
1-54	11/17/34	C. T. Nelson	Fay	Lake City	500
[fol. 1638]					200
1-55	12/25/34	Palm Beach Theatre, Inc.	Paramount	Palm Beach	186.15
1-56	1/1/30	The Casino Corp.	Casino	Jacksonville	600
1-57	8/1/35	F. O. Mullen	Fox	Fort Meade	300
1-58	12/19/31	Menendes & Carbrea Co.	Palace	Key West	400
1-59	9/27/34	Ronald Smith	Regent	Crystal River	300
1-60	2/4/28	Ft. Lauderdale Theas., Inc.	Sunset	Ft. Lauderdale	757
1-61	5/1/32	Tom Fleming	Alimar	Live Oak	400
1-62	1/1/35	Frank Attanasio	Tamiami	Everglades	196
1-63	12/1/35	United Theatres, Inc.	Roxy	Jacksonville	19.60
1-64	1/1/35	Amusement Corp. of Lake Wales	Scenic	Lake Wales	54.50
1-65	12/19/34	W. H. Richardson	Princess (Formerly Mt. Dora)	Mt. Dora	388
1-66	1/25/35	Publix Saenger Sparks Theatres, Inc.	Dixie	Ocala	400
1-67	1/13/35	Jefferson Co.	Orpheum	St. Augustine	420
1-68	12/25/34	Saratree Theatre Co.	Ritz	Sarasota	417
1-69	1/25/35	Talrog Theatres, Inc.	Palace (Formerly Stanley)	W. Palm Beach	690
1-70	1/25/35	Paramount Enterprises, Inc.	Colony	Miami Beach	736
1-71	1/28/35	Miami Dade Theatres, Inc.	Flagler	Miami	865
1-72	3/8/35	Illegible	Kingdon	Daytona Beach	876
					20.00

PLAINTIFFS' DEPOSITION EXHIBIT 20—Continued

Acct. No.	Date of Contract	Licensor	Name of Theatre	Location	Seating Capacity	Annual Fee
1-73	2/ 9/35	Saenger Theatres, Inc.	Lais	Pensacola	640	\$ 64.00
1-74	4/24/35	Mrs. S. G. Owens	Swan (Formerly Rita)	Madison	205	20.50
1-75	7/ 1/28	Deland Enterprises, Inc.	Dreks	Deland	660	66.00
1-76	7/14/35	Edwards Theatre Co.	Florida (Formerly Edwards)	Sarasota	1437	215.55
1-77	7/ 1/35	Orlando Amusement, Inc.	Rialto	Orlando	829	124.35
1-78	12/16/35	Melbourne Theatres, Inc.	Van Croix	Rau Gallie	400	40.00
1-79	10/ 4/34	Publix Saenger Sparks Theatres, Inc.	Howell	Palatka	731	73.10
1-80	9/ 1/35	Gulf Theatres, Inc.	Franklin	Tampa	865	129.75
1-81	9/ 1/35	Gulf Theatres, Inc.	Tampa	Tampa	1554	233.10
1-82	12/21/34	Imperial Co.	Imperial	Jacksonville	920	138.00
1-83	7/27/35	James R. Deland	Knights of Pythias Music Hall	Jasper	75	3.75
1-84	9/10/35	Publix-Saenger-Sparks Theatres, Inc.	Florida	Gainesville	1160	174.00
1-85	7/ 1/28	Orlando Enterprises	Baby Grand	Winter Park	250	25.00
1-86	1/ 1/35	Ragland Amusement Corp.	Hialeah	Hialeah	472	47.20
1-88	10/ 7/34	Beacham Theatre Co.	Beacham	Orlando	1008	160.20
1-89	11/ 3/33	Erwin Reitz	Park	St. Petersburg	500	50.00
1-90	3/ 1/35	Paramount Enterprises, Inc.	Olympia	Miami	2115	423.00
1-91	7/16/33	Star Theatre	Star	Arcadia	476	47.60
1-92	11/ 1/36	State Operating Co., Inc.	State	Miami	879	131.85
1-93	1/15/36	Lincoln Operating Co.	Lincoln	Miami Beach	971	145.65
1-94	1/15/33	Winter Haven Enterprises, Inc.	Grand	Winter Haven	454	45.40
1-95	11/ 3/34	Biscayne Beach Theatre, Inc.	Biscayne Beach	Miami Beach	1400	210.00
1-96	11/12/35	C. Dunn	Gibson	Chattahoochee	160	16.00
1-97	5/30/36	Little River Theatre Corp.	Edison	Miami	1000	150.00
1-98	1/ 1/36	Rosetta Theatre, Inc.	Rosetta	Miami	1017	152.55
1-99	1/ 1/37	Harbot Amusement Co.	Lakeland	Lakeland	602	60.20
1-100	7/17/35	Mrs. Enid Biggers	Winter Garden	Winter Garden	250	25.00
1-102	11/ 1/28	Clearwater Enterprises Co.	Capitol	Clearwater	848	84.80
1-101	3/16/30	Consolidated Theatres, Inc.	Capitol	Jacksonville	623	62.30
1-103	2/13/32	Thomas S. Brandon	Magnolia	Titusville	400	40.00
1-104	2/ 1/32	Leesburg Enterprises, Inc.	Palace	Leesburg	420	42.00
1-105	7/ 1/27	Pinellas Theatres, Inc.	Phel	St. Petersburg	750	75.00
1-106	10/ 1/34	Winter Haven Enterprises, Inc.	Ritz	Winter Haven	972	145.80
1-107	11/11/33	Lackrey Theatres, Inc.	Oakley	Lake Worth	529	52.90

1-108	4/21/30	Wm. B. Small	Victoria	New Smyrna	532	53.20
1-109	1/1/36	Earle M. Fain	Municipal	Apopka	400	40.00
1-110	1/15/37	Paramount Enterprises, Inc.	Sheridan	Miami Beach	1332	199.80
1-112	12/25/32	Mayfair Operating Corp.	Mayfair	Miami	409	40.90
1-113	1/21/36	Leesburg Enterprises, Inc.	Fain	Leesburg	465	46.50
1-114	12/25/36	Miami Business Properties, Inc.	Lyric	Miami	559	55.90
1-115	12/25/36	Publix Seenger Sparks Theatres, Inc.	Princess	Sanford	763	38.15
1-116	3/20/37	George E. Porter	Foley	Foley	423	42.30
1-117	11/10/30	Rita Theatres, Inc.	Rita	Miami	513	51.30
1-118	11/11/33	Lyric Operating Corp.	Harlem	Miami	743	74.30
1-119	1/13/35	Ft. Myers Thea. Ent., Inc.	Rita	Ft. Myers	450	45.00
1-120	12/23/34	West Palm Beach Theas., Inc.	Palto	W. Palm Beach	576	57.60
1-121	8/1/36	Hensler Brothers	Park	Auburndale	202	20.20
1-122	7/1/36	R. Smith	New	Green Cove Springs	150	15.00
1-123	3/8/33	Crescent Theatre Co.	Crescent	Dade City	500	50.00
1-124	11/24/34	Pinella Theatres, Inc.	Florida	St. Petersburg	463	46.30
1-126	2/15/36	O. O. Watford	Bonifay	Bonifay	293	29.30
1-127	1/13/36	Hollywood Amusements, Inc.	Arede	Hollywood	168	1.01
1-128	1/18/35	Tivoli Theatre, Inc.	Tivoli	Miami	925	138.75
1-129	4/1/36	K. W. Hanson	Valerie	Inverness	300	30.00
1-130	1/1/30	Herbert C. Wales	State (Formerly Eustis)	Eustis	499	49.00
1-131	12/6/35	Rox Theatre Co.	Roxy	Lakeland	401	40.10
1-132	1/14/33	Clearwater Enterprises, Inc.	Rita	Clearwater	572	57.20
1-134	3/25/25	Delray Theatre Co., Inc.	Delray	Delray	200	20.00
1-135	1/19/35	Pinellas Theatres, Inc.	Ninth Street	St. Petersburg	376	37.60
1-136	11/7/33	R. H. Quelltette	Dixie	Brooksville	306	30.60
1-137	2/9/35	Seenger Theatres, Inc.	Seenger	Pensacola	2016	403.20
1-138	7/22/36	Beach Theatres, Inc.	Beach	Jacksonville Bch.	790	79.00
1-139	2/15/33	Mina Manassa	Rita	Starks	270	27.00
1-140	8/1/36	R. F. Coady	Thimble	Lake Placid	150	15.00
1-142	7/25/36	E. Orto	Belmont	Pensacola	432	43.20
1-143	8/30/31	A. J. Outlaw	Crestview	Crestview	214	10.70
1-144	8/1/36	L. V. Desquin	New	Punta Gorda	300	30.00
1-145	1/13/34	Ft. Lauderdale Theas., Inc.	Queen	Ft. Lauderdale	528	52.80
1-146	11/7/32	Panama Theatre, Inc.	De Funiak	De Funiak Spgs.	420	42.00
1-147	1/1/29	Pinellas Theatres, Inc.	Cameo	St. Petersburg	490	49.00

PLAINTIFFS' DEPOSITION EXHIBIT 20—Continued

Acct. No.	Date of Contract	Licensor	Name of Theatre	Location	Seating Capacity	Annual Fee
1-148	1/1/34	Katherine Johnson	Katherine	Monticello	205	\$ 20.50
1-149	1/1/31	Tallahassee Enterprises, Inc.	Ritz	Tallahassee	424	42.40
1-150	8/29/31	Daytona Beach Theas., Inc.	Florida	Daytona Beach	888	88.80
1-151	12/24/34	Gulf Theatres, Inc.	Park	Tampa	1200	180.00
1-152	1/1/37	Illegible	Suwannee	Live Oak	300	30.00
1-153	4/1/37	H. Everett	Lincoln	Orlando	600	60.00
1-154	1/23/37	Harlow Merryday	New	Palatka	350	35.00
1-155	4/1/37	Pierce Tampa Theas., Inc.	Central	Tampa	600	60.00
1-156	3/10/37	Earl M. Fain	Corbett	Wildwood	240	24.00
1-157	9/1/32	Charles S. Morrison	New Circle	Sebring	485	48.50
1-158	2/29/36	Gulf Theatres, Inc.	Victory	Tampa	1439	215.85
1-159	1/6/37	Pinellas Theatres, Inc.	Roxy	St. Petersburg	936	140.40
1-160	6/25/35	Capitol Theatre Corp.	Capitol	Miami	1220	183.00
1-165	7/20/35	R. Koblegart, Jr.	Sunrise	Ft. Pierce	850	127.50
1-166	6/4/35	Duval Amusements, Inc.	Florida	Jacksonville	2199	439.80
1-167	3/1/33	Elbotco Amusement Co. Inc.	Granada	St. Cloud	270	27.00
1-168	1/1/37	J. L. Roulerson	Della Roba	Lake Wales	125	6.25
1-125	1/1/30	W. H. Russell	Gilbert (Formerly Park)	Okeechobee	232	14.60
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1-169	3/1/35	Fred J. Case	La Belle	La Belle	198	9.90
1-170	3/18/37	Illegible	Baker	Mac Clenny	243	24.30
1-171	9/1/31	Gulf Theatres, Inc.	Seminole	Tampa	752	75.20
1-173	4/1/37	Dixie Theatre Co.	Dixie	W. Palm Beach	425	42.50
1-176	12/24/33	Sunrise Theatre, Inc.	Ritz (Formerly Sample)	Fort Pierce	564	56.40
1-178	4/2/35	Midland Theatres, Inc.	Polk	Lakeland	1790	358.00
1-182	12/1/26	Geo. E. Porter, Jr.	Temple	Perry	400	40.00
1-185	6/15/33	D. K. Davidson	Strand	Orlando	400	40.00
1-190	4/1/31	Shaw Theatre, Inc.	Shaw	Quincy	480	48.00
1-194	11/10/29	Casino Enterprises, Inc.	Casino	Tampa	626	62.60
1-199	1/4/33	M. C. Moore	Arcade	Kissimmee	500	50.00
1-205	10/1/31	Tower Theatre, Inc.	Tower	Miami	750	75.00
1-206	11/1/30	Illegible	Rita	Jacksonville	685	68.50
1-207	11/1/30	Illegible	New Frolic	Jacksonville	700	35.00
1-209	11/1/29	B. S. Donnan	Reva (Formerly Manavista)	Chipley	250	25.00

1-215	12/ 1/32	J. J. Gillooly	Capitol	St. Petersburg	780	78.00
1-219	10/ 1/34	N. T. Ragland	Regent	Miami	1040	158.00
1-226	10/24/26	E. J. Sparks Enterprises, Inc.	Empress	Jacksonville	538	53.80
1-230	12/25/32	United Theatres, Inc.	Roxy	Miami	750	75.00
1-234	4/23/32	Volusia Amusement, Inc.	Athens	Deland	659	65.90
1-235	1/ 1/32	Charles Walder	Seventh Avenue	Miami	700	70.00
1-237	8/15/31	Casino Enterprises, Inc.	Royal	Tampa	500	50.00
1-240	10/29/32	Grove Theatre Inc.	Coconut Grove	Miami	1146	114.60
1-245	1/ 1/34	Crescent City Amusement Co.	V. I. A.	Crescent City	300	30.00
1-246	10/ 1/32	Nick Marlemes	Royal	Tarpon Springs	355	35.50
1-254	7/16/33	Capitol Theatre	Capitol	Plant City	799	79.90
1-255	8/ 2/33	Palace Theatre	Palace	New Smyrna	343	34.30
1-261	9/ 7/33	Riverside Theatre, Inc.	Riverside	Jacksonville	800	80.00
1-263	3/15/33	Bay Theatre Co.	Bay	Panama City	300	30.00
1-267	9/16/33	Isis Theatre Co.	Lyric	Daytona Beach	480	49.00
1-269	10/14/33	Arcadian Theatre, Inc.	Arcade	W. Palm Beach	800	80.00
1-272	1/ 1/30	C. E. Fleming	Imogene	Milton	290	10.00

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PLAINTIFFS' DEPOSITION EXHIBIT 21

Florida

Motion Pictures in Effect as of 6/12/39

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Acct. No.	Date of Contract	Licensor	Name of Theatre	Location	Seating Capacity	Annual Fee
1-1	9/15/33	R. L. Bailey	Eagle	Blountstown	275	\$27.50
1-2	5/1/36	Earl M. Fain	Bushnell	Bushnell	210	21.00
1-3	12/15/34	J. Carbonell & J. Fleitas	Monroe	Key West	549	54.00
1-4	1/10/34	A. Dobrow	Everglades	Belle Glade	403	40.30
1-5	5/15/37	Gene Stone	Florida	Haines City	500	50.00
1-6	6/5/35	Publix Seenger, Sparks Theatres, Inc.	Ritz	Ocala	817	122.55
1-7	5/5/34	J. M. McKinney	Princess	Cross City	200	20.00
1-8	1/1/39	C. E. Beach	Ritz	Fernandina	300	30.00
1-9	6/4/38	Duval Amusements, Inc.	San Marco	Jacksonville	498	49.60
1-10	10/1/34	Melbourne Theatres, Inc.	Van Croix	Melbourne	680	68.00
1-11	6/1/37	Mary Hayes Davis	Glades	Moore Haven	165	8.25
1-12	8/18/35	Roy Martin	Columbia	Lake City	400	40.00
1-13	10/1/37	Eastern Enterprises	Lyric	Stuart	747	74.70
1-14	1/1/35	Midland Theatres, Inc.	Palace	Lakeland	1058	158.70
1-15	1/10/34	A. Dobrow	Prince	Pahokee	270	27.00
1-16	3/10/35	Paramount Enterprises, Inc.	Coral Gables	Coral Gables	1102	165.80
1-17	11/26/36	Midland Theatres, Inc.	Strand	Lakeland	508	50.80
1-18	10/14/36	Vee Bee Theatres, Inc.	Florida	Vero Beach	808	121.20
1-19	11/30/33	Manatee Theatres, Inc.	Palmetto (Formerly New)	Palmetto	245	24.50
1-20	10/10/38	Dick Scaglione	Plaza	Ybor City (Tampa)	400	40.00
1-21	5/12/34	Mary Hayes Davis	Dixie Crystal	Clewiston	260	26.00
1-22	7/16/35	Macates Theatres, Inc.	Palace	Bradenton	979	146.85
1-23	1/1/35	Paramount Enterprises, Inc.	Rex	Miami	997	149.55
1-24	10/5/26	Wolfson-Meyer Theatres Enterprises, Inc.	Grand	W. Palm Beach	509	50.90
1-25	1/1/39	J. J. Jones	Graceville	Graceville	250	25.00
1-26	1/1/35	Paramount Enterprises, Inc.	Paramount	Miami	1491	223.65
1-27	1/1/39	H. A. Dale	Lake	Lake Butler	190	19.00
1-28	10/6/34	Pinellas Theatres, Inc.	Alcazar	St. Petersburg	1700	340.00
1-29	11/25/34	Pinellas Theatres, Inc.	La Plaza	St. Petersburg	1075	161.25
1-30	9/27/34	Tallahassee Enterprises, Inc.	State	Tallahassee	799	79.90
	7/1/28	Jefferson Co.	Jefferson	St. Augustine		

1-31	1/1/33	Panama Theatre Inc.	Panama	Panama City	54	30
1-32	11/4/34	Ketapart Theatre, Inc.	Florida (Formerly Kettler)	W. Palm Beach	167	10
1-33	6/1/35	Hollywood Amusements, Inc.	Ritz (Formerly Hollywood)	Hollywood	54	20
1-34	10/17/34	E. A. Crane	Ritz	Daytona Beach	400	20
1-35	2/24/35	Casino Enterprises, Inc.	Ritz	Tampa	825	75
1-36	7/1/39	Seminole Circuit Theatres, Inc.	Seminole	Homestead	350	35
1-37	11/26/34	Edw. J. Freiwald	Fry-Wald	Nice Ville	10	00
1-38	5/1/31	Illegible	Dixie	Apalachicola	45	00
1-39	11/26/34	Halifax Theatres, Inc.	Empire	Daytona Beach	1271	190
1-40	8/28/36	Midland Theatres, Inc.	Ritz	Bartow	661	10
1-41	11/23/36	Marianna Theatres, Inc.	Ritz	Panama City	810	50
1-42	7/1/28	Orlando Enterprises	Arcade	Ft. Myers	670	67
1-43	7/1/28	Public Seenger Sparks Theatres, Inc.	Ritz (Formerly Milane)	Sanford	804	120
1-44	11/28/34	Orlando Enterprises, Inc.	Grand	Orlando	72	30
1-45	11/24/34	Gulf Theatres, Inc.	Roxy (Formerly Nebraska)	Sulphur Springs	479	90
1-46	11/24/34	Gulf Theatres, Inc.	Garden	Tampa	872	130
1-47	4/1/28	Public-Seenger-Sparks Theatres, Inc.	Lyric	Gainesville	582	20
1-48	9/1/35	Roxy Theatre	Roxy Theatre	Greenville	177	70
1-49	12/25/34	Illegible	Arcade	Jacksonville	1134	170
1-50	11/1/30	Biltmore Theatre, Inc.	Biltmore	Buena Vista (Now Miami)	649	90
1-51	7/1/38	Duval Amusements, Inc.	Palace	Jacksonville	1461	219
1-52	8/18/35	Roy Martin	De Soto	Lake City	530	50
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1-54	5/28/38	J. M. McKinney	Fay	Jasper	290	26
1-55	12/25/34	Palm Beach Theatre, Inc.	Paramount	Palm Beach	1241	186
1-56	1/1/30	The Casino Corp.	Casino	Jacksonville	600	60
1-57	8/1/35	F. O. Mullen	Fox	Fort Mead	300	30
1-58	12/19/31	Mendes & Carbes Co.	Palace	Key West	400	40
1-59	9/27/34	Ronald Smith	Regent	Crystal River	330	33
1-60	2/4/28	Ft. Lauderdale Theat. Inc.	Sunset	Ft. Lauderdale	757	76
1-61	5/1/32	Tom Fleming	Almar	Live Oak	400	40
1-62	11/1/37	G. K. Stanford	Tamiami	Everglades	175	17
1-63	12/1/35	United Theatres, Inc.	Roxy	Jacksonville	545	54
1-64	1/1/35	Amusement Corp. of Lake Wales	Scenic	Lake Wales	388	38
1-65	12/19/34	W. H. Richardson	Princess (Formerly Mt. Dora)	Mt. Dora	400	40
1-66	1/25/35	Public Seenger Sparks Theatres, Inc.	Dixie	Ocala	420	42
1-67	1/13/35	Jefferson Co.	Orpheum	St. Augustine	417	41

PLAINTIFFS' DEPOSITION EXHIBIT 21—Continued

Acct. No.	Date of Contract	Licensor	Name of Theatre	Location	Seating Capacity	Annual Fee
1-68	12/25/34	Saratoga Theatre Co.	Ritz	Sarasota	690	\$ 79.00
1-69	1/25/35	Talbot Theatres, Inc.	Palace (Formerly Stanley)	W. Palm Beach	736	73.60
1-70	1/25/35	Paramount Enterprises, Inc.	Colony	Miami Beach	865	129.75
1-71	1/28/35	Miamidade Theatres, Inc.	Flagler	Miami	876	131.40
1-72	3/8/35	Illegible	Kingston	Daytona Beach	400	20.00
1-73	2/9/35	Seenger Theatres, Inc.	Isis	Pensacola	640	64.00
1-74	4/24/35	Mrs. S. G. Owens	Swan (Formerly Ritz)	Madison	205	20.50
1-75	7/1/28	Deland Enterprises, Inc.	Delka	Deland	660	66.00
1-76	7/14/35	Edwards Theatre Co.	Florida (Formerly Edwards)	Sarasota	1437	215.55
1-77	7/1/35	Orlando Amusements, Inc.	Rialto	Orlando	829	124.35
1-78	4/1/39	Russell Lord	Hazel	Plant City	460	46.00
1-79	10/1/34	Publix Seenger Sparks Theatres, Inc.	Howell	Palatka	731	73.10
1-80	9/1/35	Gulf Theatres, Inc.	Franklin	Tampa	865	129.75
1-81	9/1/35	Gulf Theatres, Inc.	Tampa	Tampa	1554	233.10
1-82	12/21/34	Imperial Co.	Imperial	Jacksonville	920	138.00
1-83	12/28/38	Brandon Warren	Mayo	Mayo	140	14.00
1-84	9/10/35	Publix Seenger Sparks Theatres, Inc.	Florida	Gainesville	1160	174.00
1-85	7/1/28	Orlando Enterprises	Baby Grand	Winter Park	250	25.00
1-86	1/1/35	Ragland Amusement Corp.	Hialeah	Hialeah	472	47.20
1-88	10/7/34	Beacham Theatre Co.	Beacham	Orlando	1068	160.20
1-89	11/3/33	Erwin Reiss	Park	St. Petersburg	500	50.00
1-90	3/1/35	Paramount Enterprises, Inc.	Olympia	Miami	2115	423.00
1-91	7/16/33	Star Theatre	Star	Arcadia	476	47.60
1-92	11/1/36	State Operating Co. Inc.	State	Miami	879	131.85
1-93	1/15/38	Lincoln Operating Corp.	Lincoln	Miami Beach	971	145.65
1-94	1/15/33	Winter Haven Enterprises, Inc.	Grand	Winter Haven	454	45.40
1-95	11/3/34	Biscayne Beach Thea. Inc.	Biscayne Beach	Miami Beach	1400	210.00
1-96	11/12/35	C. Dunn	Gibson	Chattahoochee	160	16.00
1-97	10/1/38	A. S. Sprigg	Dixie	Clearwater	200	10.00
1-98	1/1/36	Rosetta Theatre, Inc.	Rosetta	Miami	1017	152.55
1-100	7/17/35	Mrs. Enid Biggers	Winter Garden	Winter Garden	250	25.00
1-101	3/16/30	Consolidated Theat. Inc.	Capitol	Jacksonville	623	62.33
1-102	5/1/38	Clearwater Enterprises, Inc.	Capitol	Clearwater	827	124.05
1-103	2/13/32	Thomas S. Brandon	Magnolia	Titusville	400	40.00

1-104	2/1/32	Leesburg Enterprises, Inc.	Palace	Leesburg	42 00
1-105	7/1/27	Pinellas Theatres, Inc.	Phell	St. Petersburg	75 00
1-106	10/1/34	Winter Haven Enterprises, Inc.	Ritz	Winter Haven	145 80
1-107	11/11/33	Lackrey Theatres, Inc.	Oakley	Lake Worth	52 90
1-108	4/21/30	William B. Small	Victoria	New Smyrna	53 20
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1-109	1/1/36	Earle M. Fain	Municipal	Apopka	40 00
1-110	1/15/37	Paramount Enterprises, Inc.	Sheridan	Miami Beach	1332
1-111	6/1/38	Mrs. D. L. Morrison	Reliance	Clermont	235
1-112	12/25/32	Mayfair Operating Corp.	Mayfair	Miami	409
1-113	1/21/36	Leesburg Enterprises, Inc.	Fain	Leesburg	465
1-114	12/25/36	Miami Business Properties Inc.	Lyric	Miami	559
1-115	9/1/38	Katherine Johnson	Katherine	Monticello	330
1-116	3/20/37	George E. Porter	Foley	Foley	423
1-117	11/10/30	Ritz Theatre, Inc.	Ritz	Miami	513
1-118	11/11/33	Lyric Operating Corp.	Harlem	Miami	743
1-119	1/13/35	Ft. Myers Theatre Ent. Inc.	Ritz	Ft. Myers	450
1-120	12/23/34	West Palm Beach Theat., Inc.	Rialto	W. Palm Beach	576
1-121	8/1/36	Hensler Brothers	Part	Auburndale	202
1-122	5/1/38	Gulf Coast Amusmt. Corp.	Gulf	Pensacola	450
1-123	3/8/33	Crescent Theatre, Co.	Crescent	Dade City	500
1-124	11/24/34	Pinellas Theat., Inc.	Florida	St. Petersburg	463 60
1-125	1/1/30	W. H. Russell	Gilbert (Formerly Park)	Okeechobee	232
1-126	8/15/37	Saunders & Sheffield	Bonifay	Bonifay	200
1-127	1/18/36	Hollywood Amusmt. Inc.	Arcade	Hollywood	168
1-128	1/18/35	Tivoli Theatre, Inc.	Tivoli	Miami	925
1-129	4/1/36	K. W. Hanson	Valeris	Inverness	138 75
1-130	1/1/30	Herbert C. Wales	State (Formerly Eustis)	Eustis	300
1-131	12/6/35	Rox Theatre Co.	Rox	Lakeland	499
1-132	7/25/38	Clearwater Enterprises, Inc.	Rita	Clearwater	401
1-133	6/20/33	A. E. Adams	Port	Port St. Joe	553
1-134	3/25/25	Delray Theatre Co. Inc.	Delray	Delray	750
1-135	1/19/35	Pinellas Theatres, Inc.	Ninth Street	St. Petersburg	376
1-136	11/7/33	R. H. Quellet	Dixie	Brooksville	306
1-137	2/9/35	Sanger Theatres, Inc.	Sanger	Pensacola	2016
1-138	7/22/36	Beach Theatres, Inc.	Beach	Jacksonville	790
1-139	2/15/33	Mina Manassa	Ritz	Starke	270

PLAINTIFFS' DEPOSITION EXHIBIT 21—Continued

Acct. No.	Date of Contract	Licensor	Name of Theatre	Location	Seating Capacity	Annual Fee
1-140	8/1/36	R. F. Coady	Thimble	Lake Placid	150	\$ 15.00
1-141	7/1/37	Cocoa Theatres, Inc.	State	Cocoa	729	72.90
1-142	7/25/36	Ed. Ortle	Belmont	Pensacola	432	43.20
1-143	3/1/36	Mrs. B. A. Outlaw	Crestview	Crestview	290	29.00
1-144	8/1/36	L. V. Desquin	New	Punta Gorda	300	30.00
1-145	1/13/34	Ft. Lauderdale Theas. Inc.	Queen	Ft. Lauderdale	528	52.80
1-146	7/1/38	Miami Theatre, Inc.	Miami	Miami	444	44.40
1-147	12/25/37	Hollywood Amusmnts., Inc.	Florida	Hollywood	795	79.50
1-148	1/1/29	Pinellas Theatres, Inc.	Cameo	St. Petersburg	490	49.00
1-149	7/1/38	The Culver Corp.	Edison	Miami	600	60.00
1-150	1/1/31	Tallahassee Enterprises, Inc.	Ritz	Tallahassee	424	42.40
1-151	8/26/31	Daytona Beach Theas. Inc.	Florida	Daytona Beach	888	88.80
1-152	12/24/34	Gulf Theatres, Inc.	Park	Tampa	1200	120.00
1-153	1/1/37	Illegible	Swansee	Live Oak	300	30.00
1-154	4/1/37	H. Everett	Lincoln	Orlando	600	60.00
1-155	1/23/37	Harlow Merryday	New	Palatka	350	35.00
1-156	4/1/37	Pierce Tampa Theas. Inc.	Central	Tampa	600	60.00
1-157	3/10/37	Earl M. Fain	Corbett	Wildwood	240	24.00
1-158	9/1/32	Chas. S. Morrison	New Circle	Sebring	485	48.50
1-159	1/1/39	Garden Operating Co.	Surf	Miami Beach	600	60.00
1-160	1/6/37	Pinellas Theatres, Inc.	Roxey	St. Petersburg	936	140.40
1-161	6/25/35	Capitol Theatre Corp.	Capitol	Miami	1220	183.00
1-162	10/1/38	Parkway Theatre Corp.	Parkway	Miami	600	60.00
1-163	11/9/38	A. Dobrow	Golden Nugget	Pahokee	215	21.50
[fol 1644]	11/4/38	Washington Operating Co.	Cameo	Miami Beach	1060	159.00
1-164	11/23/38	Strand Theatre, Inc.	Strand	Miami	900	135.00
1-165	7/20/35	R. Koblegart, Jr.	Sunrise	Fort Pierce	850	127.50
1-166	6/4/35	Duval Amusements, Inc.	Florida	Jacksonville	2199	439.80
1-167	3/1/33	Elbotco Amusement Co., Inc.	Granada	St. Cloud	270	27.00
1-168	1/1/37	J. L. Roulemon	Della Roba	Lake Wales	125	6.25
1-169	3/1/25	Fred J. Case	La Belle	La Belle	198	9.90
1-170	3/18/37	Illegible	Baker	MacClenny	243	24.30
1-171	9/1/31	Gulf Theatres, Inc.	Seminole	Tampa	752	75.20

1-172	1/1/38	Delray Theatre	Delray	425	42.50
1-174	12/1/37	C. S. Dunn	Havana	120	12.00
1-175	11/20/37	Saenger Theatres, Corp.	Rex	651	65.10
1-177	7/22/37	Lincoln Theatres, Inc.	Lincoln	425	42.50
1-178	4/2/35	Midland Theatres, Inc.	Polk	1790	358.00
1-179	1/1/38	R. W. Edwards	Lincoln	375	18.75
1-180	1/1/38	I. Tendrich	Ace	350	35.00
1-181	1/1/38	Martin Theatres	Ritz	400	40.00
1-182	12/1/26	George E. Porter, Jr.	Temple	275	27.50
1-183	8/1/37	Leesburg Enterprises, Inc.	Leric	300	30.00
1-184	8/1/37	Leesburg Enterprises, Inc.	Priest	1096	164.40
1-185	12/24/38	Central Theatres, Inc.	Matanzas	250	25.00
1-186	1/1/38	R. W. Edwards	Rex	350	35.00
1-187	11/15/37	Fred J. Case	Pompano	250	25.00
1-188	2/28/37	Pinellas Theatres, Inc.	Harlem	438	43.80
1-189	8/1/37	Leesburg Enterprises, Inc.	Arcade	250	25.00
1-190	4/1/31	Shaw Theatre, Inc.	Shaw	1084	162.60
1-192	12/25/37	Central Theatres, Inc.	Roxey	480	48.00
1-193	5/6/38	D. G. Bradford	Harlem	250	25.00
1-194	11/10/29	Casino Enterprises, Inc.	Casino	1084	162.60
1-195	5/1/38	Dixie Theatre Co.	Palace	250	25.00
1-196	11/15/37	Mrs. W. L. King	Grand	300	30.00
1-197	12/5/38	Lewie H. Cooper	Flagler	100	5.00
1-198	5/1/38	M. A. Yellowhair	Capital	440	44.00
1-199	1/4/33	M. C. Moore	Arcade	402	40.20
1-200	5/20/38	Paramount Enterprises	Cinema Casino	500	50.00
1-201	1/9/38	Clearwater Enterprises, Inc.	Bellevue	973	145.95
1-202	1/1/39	Gulf Theatre	Gulf	150	3.30
1-205	10/1/31	Tower Theatre, Inc.	Tower	200	20.00
1-206	11/1/30	Illegible	Ritz	750	75.00
1-207	1/12/39	R. C. Wagoner	Santa Rosa	685	68.50
1-208	11/1/30	Illegible	New Frolic	300	15.00
1-209	11/1/29	B. S. Donnan	Reva (Formerly Manivista)	700	35.00
1-210	12/21/38	F. O. Mullen	Park	250	25.00
1-211	1/15/39	L. V. Desguin	Royal	400	40.00
1-215	12/1/32	J. J. Gillyoly	Capitol	445	44.50
1-219	10/1/34	N. T. Ragland	Regent	780	78.00
			Miami	1040	156.00

PLAINTIFFS' DEPOSITION EXHIBIT 21—Continued

Acct. No.	Date of Contract	Licenses	Name of Theatre	Location	Seating Capacity	Annual Fee
1-226	10/24/36	E. J. Sparks Enterprises, Inc.	Empress	Jacksonville	538	\$ 53.80
1-230	12/25/32	United Theatres, Inc.	Roxy	Miami	750	75.00
1-234	4/23/32	Volusia Amusements, Inc.	Athens	Deland	659	65.90
1-235	1/1/32	Charles Walder	Seventh Avenue	Miami	700	70.00
1-237	8/15/31	Casino Enterprises, Inc.	Royal	Tampa	500	50.00
1-240	10/29/32	Grove Theatre, Inc.	Coconut Grove	Miami	1146	114.60
1-245	1/1/34	Crescent City Amusement Co.	V. I. A.	Crescent City	300	20.00
1-246	10/1/32	Nick Marlemes	Royal	Tarpon Springs	355	35.50
1-254	7/16/33	Capitol Theatre	Capitol	Plant City	799	79.90
1-255	8/2/33	Palace Theatre	Palace	New Smyrna	343	34.30
1-261	9/7/33	Riverside Theatre, Inc.	Riverside	Jacksonville	800	80.00
1-267	9/16/33	Isis Theatre Co.	Lyric	Daytona Beach	490	49.00
1-269	10/14/33	Arcspier Theatres, Inc.	Arcade	W. Palm Beach	800	80.00
1-272	3/15/38	Walter Bruckin	Imogene	Milton	200	20.00

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PLAINTIFFS' DEPOSITION EXHIBIT 22.

Agreement between Society and R. L. Bailey for theatre license. This exhibit is identical in form with Exhibit "G" to the Bill of Complaint.

PLAINTIFFS' DEPOSITION EXHIBIT 23

Florida

Hotels in Effect as of 6/9/37

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Acct. No.	Date of Contract	Licensee	Name of Hotel	Location	Annual Fee
3-1	1/18/35	W. N. Urney	Urney Hotel	Miami	\$50.00
R3-1	12/1/36	Thirty One West Adams Street Corporation	Roosevelt Hotel (Formerly Carling)	Jacksonville	286.00
R3-2	1/1/35	J. F. Gough	Hotel Alcazar	Miami	220.00
3-2	1/1/35	A. L. Harvey & Son	Phail Hotel	St. Petersburg	30.00
3-3	12/1/36	Thirty One West Adams Street Corporation	Roosevelt Hotel (Formerly Carling)	Jacksonville	240.00
3-4	4/1/35	Sterling B. Bottome	Vinoy Park Hotel	St. Petersburg	120.00
3-5	10/18/34	Roney Investment Co.	Roney Plaza Hotel	Miami Beach	300.00
3-6	12/20/34	H. and C. Operating Co.	Miami Biltmore Hotel	Coral Gables	450.00
3-7	12/20/34	Oscar Johnson	Hollywood Hotel	Hollywood	150.00
3-8	1/15/35	Mr. J. E. Shuey	Columbus Hotel	Miami	75.00
3-9	1/1/35	Walker Chandler	Everglades Hotel	Miami	90.00
3-10	1/1/35	Morton Meucher	Floridian Hotel	Miami Beach	100.00
3-11	1/1/35	A. B. Chase	Hotel Concord	St. Petersburg	25.00
3-12	12/15/35	Hotel Pancoast Co.	Hotel Pancoast	Miami Beach	75.00
3-13	1/5/35	Bay Shore Corporation	Nautilus Hotel	Miami Beach	85.00
3-14	12/20/34	Barnes Operating Co.	Huntington Hotel	St. Petersburg	100.00
3-15	1/10/35	Belleair Hotel Co.	Bellevue-Biltmore	Belleair	150.00
3-16	1/1/35	R. A. Bary	Florion Hotel	St. Petersburg	45.00
3-17	1/2/35	Don Ce-Sar Beach Hotel	Don Ce-Sar Hotel	Pass-a-Grille	45.00
3-18	1/17/35	Illegible	Hotel Wyoming	Orlando	50.00
3-19	11/5/36	Floridan Hotel	Hotel Wyoming	Orlando	30.00
3-20	12/1/36	Hillsboro Hotel, Inc.	Hillsboro Hotel	Tampa	100.00
3-21	1/1/35	Hotel Blackstone	Hotel Blackstone	Miami Beach	125.00
3-22	1/1/35	Coleman Holding Co.	Jungle Hotel	St. Petersburg	68.00
3-23	1/1/35	J. N. Brown	Suwannee Hotel	St. Petersburg	50.00
3-24	1/1/35	F. M. Haynes	Princess Isseena Hotel	Daytona Beach	90.00
3-25	1/25/35	A. C. Croft	Hotel Deermon	St. Petersburg	10.00
3-26	1/1/35	D. R. Grady	Poinsettia Hotel	St. Petersburg	45.00
3-27	1/15/35	C. Krom	Flamingo Hotel	Miami Beach	75.00
3-28	1/16/35	Wofford Hotel Corp.	Wofford Hotel	Miami Beach	60.00
3-29	1/1/35	Wm. Atkinson	Colonial Orange Court	Orlando	50.00

PLAINTIFFS' DEPOSITION EXHIBIT 23--Continued

Acct. No.	Date of Contract	Licensor	Name of Hotel	Location	Annual Fee
3-30	1/1/35	Mr. Edward C. Sweeney	Whitehall Hotel	Palm Beach	100.00
3-31	11/15/36	Florida Beach Hotel Co.	Hotel Geo. Washington	West Palm Beach	100.00
3-32	1/25/35	C. A. Westcott	Vineia Hotel	Palm Beach	30.00
3-33	1/1/36	A. W. Upham	Royal Palm Hotel	St. Petersburg	10.00
3-34	1/1/35	J. F. Gough	Hotel Alcazar	Miami	90.00
3-35	1/18/35	T. V. Bennett	Hotel Lincoln	Miami Beach	60.00
3-36	1/20/35	Mills Hotel Corp.	Clarendon Hotel	Daytona Beach	90.00
3-37	1/20/35	Mills Hotel Corp.	Coquina Hotel	Ormond Beach	90.00
3-38	1/1/35	College Arms Hotel Co.	College Arms Hotel	Deland	75.00
3-39	1/1/36	C. T. Scoulon	Hotel Fenway	Dunedin	50.00
3-40	12/25/34	Princess Mary Hotel Co., Inc.	Ponce de Leon Hotel	St. Petersburg	30.00
3-41	1/1/35	A. McMurray & Sons	Alexander Hotel	St. Petersburg	30.00
3-42	1/29/37	Mayflower Hotel	Mayflower Hotel	Palm Beach	37.00
3-43	12/31/35	T. A. Clarke Co.	Palm Beach Hotel	Palm Beach	75.00
3-44	1/1/36	L. G. Davis	Ft. Harrison Hotel	Clearwater	20.00
3-45	2/15/36	L. E. Thomas	Amphitrite Hotel	Fort Lauderdale	45.00
3-46	1/15/36	New Alamac Hotel, Inc.	Alamac Hotel	Miami Beach	45.00
3-48	1/10/36	Hotel Evans, Inc.	Hotel Evans	Miami Beach	37.50
3-49	1/24/36	Illegible	Hotel Good	Miami Beach	30.00
3-50	2/1/36	F. F. Hamilton	Miramar Hotel	Miami	45.00
3-51	1/1/36	S. Robert Bigel	Strath-Haven Hotel	Miami Beach	45.00
3-52	1/10/36	A. Crawford	Surfside Hotel	Miami Beach	56.25
3-53	1/26/36	T. Whitman Co.	Hotel Whitman	Tampa	225.00
3-54	1/1/36	George H. Mason	Tampa Terrace Hotel	Miami Beach	35.00
3-55	2/1/36	K. J. Shelley	Hotel Embassy	Miami Beach	90.00
3-59	12/25/34	Leonard Thomson	McAllister Hotel	Bradenton	50.00
3-60	1/1/36	C. D. Sweat	Hotel Manatee River	West Palm Beach	45.00
3-62	1/15/35	R. V. Berry	Hotel Royal Worth	Miami Beach	75.00
3-63	1/20/36	Atlantis Hotel	Atlantis Hotel		
3-64	1/1/36	Lakeside Inn Properties, Inc.	Lakeside Inn	Mount Dora	50.00
3-65	1/7/36	Floridan Hotel	Floridan Hotel	Tampa	90.00

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3-67	2/15/37	J. G. Croft.	Governor's Club Hotel.	Fort Lauderdale.	15.00
3-68	12/24/34	F. Harris.	Soreno Hotel.	St. Petersburg.	120.00
3-69	12/21/36	Charellen Corporation.	Lauderdale Beach Hotel.	Fort Lauderdale.	30.00
3-70	1/ 6/36	I. Nasawer.	West Coast Inn.	St. Petersburg.	30.00
3-71	1/ 1/37	Dempsey-Vanderbilt Hotel Corporation.	Dempsey-Vanderbilt.	Miami Beach.	150.00
3-72	1/16/37	Hotel Helene.	Hotel Helene.	Miami Beach.	35.00
3-73	12/22/36	Elliott Bishop.	Brazilian Court Hotel.	Palm Beach.	100.00
3-74	1/ 1/37	Collier-Florida Coast Hotels.	Hotel Sarasota Terrace.	Sarasota.	90.00
3-75	1/20/37	W. G. McMeehan.	Shoremade Hotel.	Miami Beach.	56.00
3-76	1/ 1/37	Indian River Hotel.	Indian River Hotel.	Rockledge.	20.00
3-77	1/ 1/37	Fleetwood Hotel.	Fleetwood Hotel.	Miami Beach.	55.04
3-115	1/ 1/30	Princess Martha Hotel.	Princess Martha Hotel.	St. Petersburg.	90.00
3-120	1/ 1/33	W. E. Allison.	Allison Hotel.	St. Petersburg.	25.00
NYC-	(12/22/34		(Ponce de Leon.	St. Augustine.	75.00
3-1510	(1/ 5/35	Florida East Coast Hotel Company.	(Hotel Ormond.	Ormond Beach.	90.00
	(12/24/34		(The Breakers.	Palm Beach.	160.00
NYC-	(12/24/34		(Hotel Casa Marina.	Key West.	60.00
3-1518	1/ 2/37	Kenilworth Operating Corporation.	Kenilworth Lodge.	Sebring.	75.00

PLAINTIFFS' DEPOSITION EXHIBIT 24

Florida

Hotels in Effect as of 6/12/39

Acct. No.	Date of Contract	Licensor	Name of Hotel	Location	Annual Fee
3-1	1/18/35	W. N. Urney	Urney Hotel	Miami	\$ 50.00
R3-2	1/1/35	J. F. Gough	Hotel Alcazar	Miami	220.00
3-2	1/1/35	A. L. Harvey & Son	Phell Hotel	St. Petersburg	30.00
R3-3	12/1/35	Thirty One West Adams	Roosevelt Hotel (Formerly Carling)	Jacksonville	240.00
R3-3	4/26/38	Cherokee Hotel Co., Inc.	Cherokee Hotel	Tallahassee	90.00
3-4	4/1/35	Sterling B. Bottoms	Vinoy Park Hotel	St. Petersburg	120.00
R3-4	7/1/38	Kloppel Hotels, Inc.	Mayflower Hotel	Jacksonville	200.00
3-5	4/1/35	Roney Investment Co.	Roney Plaza Hotel	Miami Beach	300.00
R3-5	7/1/38	Kloppel Hotels, Inc.	George Washington	Jacksonville	260.00
3-6	10/18/34	H. and C. Operating Co.	Miami Biltmore Hotel	Coral Gables	450.00
R3-6	1/15/39	Michael Ryebeck	Leona Hotel	Miami	17.00
3-7	12/20/34	Oscar Johnson	Hollywood Hotel	Hollywood	150.00
3-8	1/15/35	Mr. J. E. Shuey	Columbus Hotel	Miami	75.00
3-9	1/1/35	Walter Chandler	Everglades Hotel	Miami	90.00
3-10	1/1/39	Shelbourne-Grand Hotel Co.	Floridian Hotel	Miami Beach	100.00
3-13	12/15/35	Hotel Panoast Co.	Hotel Panoast	Miami Beach	75.00
3-14	1/5/35	Bay Shore Corporation	Nautilus Hotel	Miami Beach	85.00
3-15	12/20/34	Barnes Operating Co.	Huntington Hotel	St. Petersburg	100.00
3-16	1/1/39	Bellevue-Biltmore	Hotel Bellevue-Biltmore	Belleair	100.00
3-17	1/1/35	R. A. Bary	Florinton Hotel	St. Petersburg	45.00
3-18	1/2/35	Don Ce-Sar Beach Hotel	Don Ce-Sar Hotel	Pass-a-Grille	45.00
3-19	1/17/35	Illegible	Hotel Wyoming	Orlando	50.00
3-20	11/5/36	Floridan Hotel	Floridan Hotel	Tampa	30.00
3-21	1/5/37	E. W. Croylon	Naples Hotel	Naples	82.00
3-22	1/1/39	Mr. Alfred Stone	Blackstone Hotel	Miami Beach	125.00
3-23	1/31/35	Coleman Holding Co.	Jungle Hotel	St. Petersburg	68.00
3-24	1/1/35	J. N. Brown	Suwannee Hotel	St. Petersburg	50.00
3-25	1/1/35	E. M. Haynes	Princess Isabela Hotel	Daytona Beach	90.00
3-26	1/25/35	A. C. Craft	Hotel Deermont	St. Petersburg	10.00
3-27	1/1/35	D. B. Grady	Poinsettia Hotel	St. Petersburg	45.00
	1/15/35	C. Krom	Flamingo Hotel	Miami Beach	75.00

3-28	1/16/33	Wofford Hotel Corp.	Wofford Hotel.	Miami Beach	60.00
3-29	1/1/35	Wm. Atkinson	Colonial Orange Court Hotel	Orlando	50.00
3-30	1/1/35	Mr. Edward C. Sweeney	Whitehall Hotel	Palm Beach	100.00
3-31	11/15/36	Florida Beach Hotel Co.	Hotel George Washington	West Palm Beach	100.00
3-32	1/25/35	C. A. Wesott	Vineta Hotel	Palm Beach	30.00
3-33	1/1/36	A. W. Upham	Royal Palm Hotel	St. Petersburg	10.00
3-34	1/1/35	J. F. Gough	Hotel Alcazar	Miami	90.00
3-35	1/18/35	T. W. Bennett	Hotel Lincoln	Miami Beach	60.00
3-36	1/20/35	Mills Hotel Corp.	Clarendon Hotel	Daytona Beach	90.00
3-37	1/20/35	Mills Hotel Corp.	Coquina Hotel	Ormond	90.00
3-38	1/1/35	College Arms Hotel Co.	College Arms Hotel	Deland	75.00
3-39	1/1/36	C. T. Scanlon	Hotel Fenway	Dunedin	50.00
3-40	12/25/34	Princess Mary Hotel Co.	Ponce de Leon Hotel	St. Petersburg	30.00
3-41	1/1/35	A. McMurray & Sons	Alexander Hotel	St. Petersburg	30.00
3-42	1/20/37	Mayflower Hotel	Mayflower Hotel	Palm Beach	37.00
3-43	12/31/35	T. A. Clarke Co.	Palm Beach Hotel	Palm Beach	75.00
3-44	1/1/36	L. G. Davis	Pt. Harrison Hotel	Clearwater	75.00
3-45	2/15/36	L. E. Thomas	Amphitrite Hotel	Fort Lauderdale	20.00
3-46	1/15/36	New Alamac Hotel, Inc.	Alamac Hotel	Miami Beach	45.00
3-47	7/1/38	Kloppel Hotels, Inc.	Mayflower Hotel	Jacksonville	212.50
3-48	1/1/39	Hotel Evans Operating	Hotel Evans	Miami Beach	45.00
3-49	1/24/36	Illegible	Hotel Good	Miami Beach	37.50
3-50	2/1/36	F. F. Hamilton	Miramar Hotel	Miami	30.00
3-51	7/1/38	Kloppel Hotels, Inc.	George Washington	Jacksonville	382.50
3-53	1/26/36	Whitman Co.	Hotel Whitman	Miami Beach	56.25
3-54	1/1/39	Collier Florida Coast Hotels	Tampa Terrace Hotel	Tampa	360.00
3-55	2/1/36	K. J. Shelley	Hotel Embassy	Miami Beach	35.00
3-56	12/1/38	Thorne-Shaw, Inc.	Oleanders Hotel	Eau Gallie	20.00
3-57	12/15/38	Leroy Villas, Inc.	Leroy Hotel	Miami Beach	45.00
3-58	1/15/39	Ringling Isles, Inc.	John Ringling Hotel	Sarasota	75.00
3-59	12/25/34	Leonard Thomson	McAllister Hotel	Miami	90.00
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3-60	1/1/36	C. D. Sweet	Hotel Manatee River	Bradenton	50.00
3-61	12/25/38	Illegible	Belmar Hotel	Miami Beach	25.00
3-62	12/15/35	R. V. Berry	Hotel Royal Worth	West Palm Beach	45.00
3-63	1/1/39	Atlantis Hotel Operating Corp.	Atlantis Hotel	Miami Beach	75.00
3-64	1/1/36	Lakeside Inn Properties, Inc.	Lakeside Inn	Mount Dora	50.00

PLAINTIFFS' DEPOSITION EXHIBIT 24—Continued

Acct. No.	Date of Contract	Licensor	Name of Hotel	Location	Annual Fee
3-65	1/7/36	Floridan Hotel	Floridan Hotel	Tampa	90.00
3-66	4/1/39	Hillsboro Hotel, Inc.	Hillsboro Hotel	Tampa	60.00
3-67	1/21/39	Luther I. Smith	Tatem Hotel	Miami Beach	37.50
3-68	12/24/34	F. Harris	Soreno Hotel	St. Petersburg	120.00
3-69	12/21/36	Charellen Corp.	Lauderdale Beach Hotel	Fort Lauderdale	30.00
3-70	1/6/36	I. Nasawer	West Coast Inn	St. Petersburg	30.00
3-71	1/1/37	Dempsey-Vanderbilt Hotel Corp.	Dempsey-Vanderbilt Hotel	Miami Beach	150.00
3-72	1/10/39	Hotel Helene, Inc.	Helene Hotel	Miami Beach	25.00
3-73	12/22/36	Elliott Bishop	Brazilian Court Hotel	Palm Beach	100.00
3-75	1/20/37	W. G. McMeekin	Shoremade Hotel	Miami Beach	56.00
3-76	2/1/39	Shoreham Operating Co.	Shoreham-Norman Hotel	Miami Beach	10.00
3-78	1/1/38	Henry L. Doherty Co., Inc.	Palm Beach Biltmore Hotel	Ponte Bedra	40.00
3-79	10/1/37	Ponte Vedra Operating Co.	The Inn	Miami Beach	30.00
3-81	2/1/39	N. Nash	Nash Hotel	Schering	45.00
3-82	1/2/39	Harder Hall, Inc.	Harder Hall	Vero Beach	10.00
3-83	12/30/32	Royal Park Inn, Inc.	Royal Park Inn	Winter Park	10.00
3-84	1/1/39	J. S. Foley	Seminole Hotel	Winter Park	50.00
3-85	1939 Seas.	Virginia Inn Co.	Virginia Inn	Miami Beach	25.00
3-86	12/25/38	1144 Ocean Drive, Inc.	Hotel Detroit	St. Petersburg	90.00
3-87	12/25/38	Hubert Rutland	Princess Marthe Hotel	Lake Worth	25.00
3-115	1/1/30	Princess Marthe Hotel	Princess Marthe Hotel	St. Petersburg	40.00
3-119	12/21/38	Hyge's Hotel Co., Inc.	Gulf Stream Hotel	St. Petersburg	25.00
3-120	1/1/33	Chas. E. Allison	Allison Hotel	Miami Beach	240.00
NYC-3-1502	1/1/37	H. Miller	McFadden-Deauville Hotel	Miami Beach	75.00
NYC-3-1510	(12/22/24)	Florida East Coast Hotel Company	(Ponce de Leon Hotel Ormond)	St. Augustine	90.00
NYC-3-1518	(12/24/34)	Kenilworth Operating Corporation	(The Breakers Hotel Cass Marina)	Ormond Beach	160.00
NYC-3-1579 & R3-1579	1/2/37		Kenilworth Lodge	Key West	60.00
	1/1/39	Meyer Hotel Co.	Roosevelt Hotel	Sebring	75.00
				Jacksonville	200.85

Agreement between Society and W. N. Urney for Urney Hotel. This exhibit is identical in form with Exhibit "H" of the Bill of Complaint.

[fol. 1651]

PLAINTIFFS' DEPOSITION EXHIBIT 26

Florida

Restaurants in Effect as of 6/9/37

Acct. No.	Date of Contract	Licenses	Name of Restaurant	Location	Annual Fee
2-1	1/1/36	Jack Broome	The Reef Grill	Miami	\$45.00
2-2	11/1/34	W. V. Varney	Southern Cafeteria	Miami	300.00
2-3	10/1/36	Mrs. C. H. Savage	The Greyhound	Miami	60.00
2-4	7/1/36	Cecil T. Williams	Ole Swimming Hole	St. Petersburg	120.00
2-5	1/1/37	E. W. Sasser	Sasser's Grill & Bar	Clearwater	180.00
2-6	12/1/36	Manuel Garcia & Casimiro Hernandez	Columbia Restaurant	Tampa	125.00
2-7	12/1/31	Sam Warren	Flamingo Cafe	Orlando	67.50
2-8	11/1/36	Florida Amusement Co.	The Floridan Tavern	Jacksonville	190.00
2-9	1/18/36	Carter Catering Corp.	Carter's Restaurant	Miami	62.50
2-10	1/1/36	Charley's Paddock Grille, Inc.	Paddock Grille	Miami Beach	50.00
2-11	1/1/36	L. A. Wertheimer	Wert's, On the Ocean	Miami Beach	60.00
2-12	1/10/36	The Nunnally Co.	Nunnally's	Miami Beach	30.00
2-13	2/15/36	Clara May Downey	Olney Inn	Miami	15.00
2-14	2/1/36	Freddie Kelly	Pig & Sax Grill	Tampa	30.00
2-15	2/1/36	Illegible	El Dorado Inn	Tampa	30.00
2-16	1/1/36	Celestine Landeira	Las Novedades Restaurant	Tampa	180.00
2-17	1/1/36	Palm Tavern Patio	Palm Tavern Patio	West Palm Beach	180.00
2-18	12/29/34	Don Dickerman	Pirates Den	Miami Beach	180.00
2-19	1/1/37	The 700, Inc.	The 700	Fort Lauderdale	45.00

PLAINTIFFS' DEPOSITION EXHIBIT 26—Continued

Acct. No.	Date of Contract	Licensor	Name of Restaurant	Location	Annual Fee
2-29	1/1/37	M. Chrest.	The Chrest's Bar & Grill.	Hollywood	45.00
2-30	12/1/36	Berney's Restaurant.	Berney's Restaurant.	Jacksonville	180.00
2-31	4/1/37	Silver Grill.	Silver Grill.	Lake Worth	180.00
2-32	2/1/37	E. Roebey.	The Circus Club.	Miami Beach	50.00
2-33	1/15/37	Fan & Bill's, Inc.	Fan & Bill's Cocktail Bar & Rest.	Miami Beach	80.00
2-34	1/1/37	Fred W. Sommerfeld.	The Hofbrau Restaurant.	Miami	52.50
2-35	1/7/37	O. Brouna & M. Cavalieri.	The Patio Moreque.	Miami Beach	75.00
2-36	1/19/37	Roadside Rest. Co., Inc.	The Roadside Restaurant.	Miami Beach	300.00
2-37	1/1/37	J. Levine.	The Southern Cafe.	Miami Beach	180.00
2-38	1/20/37	Illegible.	The Sunny Isles Club Casino.	North Miami Beach	100.00
2-39	1/27/37	Samdon Catering Corp.	The Colony Club.	Palm Beach	96.00
2-40	12/1/36	Zell's, Inc.	Club Madrid.	Palm Beach	100.00
2-41	1/1/37	Tom's.	Tom's.	Wassacola	45.00
2-42	12/5/36	El Jorte, Inc.	The Chatterbox.	St. Petersburg	75.00
2-43	1/1/37	Joseph Spitzer.	The Patio Grill.	West Palm Beach	45.00
2-44	2/6/37	Vreeland Rieden.	Rieden's Bar & Cafe Patio.	Palm Beach	15.00
2-127	1/3/31	E. R. Wadley.	Beach Club Restaurant.	Palm Beach	90.00
2-202	1/1/34	Illegible.	The Patio Restaurant.	Palm Beach	100.00
2-204	1/1/33	N. L. Dennis.	Park Cafeteria & Grill.	St. Petersburg	45.00
2-1520	12/15/34	Childs Co. of Providence.	Childs.	Miami	175.00

NYC

PLAINTIFFS' DEPOSITION EXHIBIT 27

Florida

Restaurants in Effect as of 6/12/39

Acct. No.	Date of Contract	Licensor	Name of Restaurant	Location	Annual Fee
2-1	1/1/36	Jack Broome	The Reef Grill	Miami	\$45.00
2-2	11/1/34	Mr. W. V. Varney	Southern Cafeteria	Miami	300.00
2-3	10/1/36	Mrs. C. B. Savage	The Greyhound	Miami	60.00
2-4	7/1/36	Cecil T. Williams	Ole Swimming Hole	St. Petersburg	120.00
2-5	4/16/38	Roney Plaza Hotel	Cafe de la Pais	Miami	75.00
2-6	1/1/37	E. W. Sasser	Sasser's Grill & Bar	Clearwater	180.00
2-7	12/1/38	Columbia Restaurant	Columbia Restaurant	Tampa	180.00
2-8	12/1/38	George Fasse's	Fasse's Restaurant	Miami Beach	45.00
2-9	12/1/31	Sam Warren	Flamingo Cafe	Orlando	67.50
2-12	1/1/39	Isador Gold	The Avenue Grill	Palm Beach	50.00
2-13	10/1/38	B & B Cafe, Inc.	B & B Cafe	Pensacola	120.00
2-14	1/1/36	Charley's Paddock Grille, Inc.	Paddock Grille	Miami Beach	50.00
2-15	1/1/36	L. A. Wertheimer	Wert's, On the Ocean	Palm Beach	60.00
2-16	11/1/38	Palm Tavern	Palm Tavern	West Palm Beach	75.00
2-18	4/14/39	Rubin Bros.	Rubin's Restaurant	Tampa	15.00
2-19	2/15/36	Clara May Downey	Oiney Inn	Miami Beach	30.00
2-31	4/1/37	Silver Grill	Silver Grill	Lake Worth	180.00
2-33	1/1/39	Mrs. Fan Saerman	Fan & Bill's Restaurant	Miami Beach	60.00
2-34	1/1/37	Fred W. Sommerfeld	The Hofbrau Restaurant	Miami	52.50
2-36	1/19/37	Roadside Rest. Co., Inc.	The Roadside Restaurant	Miami Beach	300.00
2-37	1/1/37	J. Levine	Southern Cafeteria	Miami Beach	780.00
2-38	1/20/37	Illegible	The Sunny Isles Club Casino	Miami Beach	100.00
2-39	1/27/37	Samdon Catering Corp.	The Colony Club	Palm Beach	96.00
2-43	1/1/37	Joseph Spitzer	The Patio Grill	West Palm Beach	45.00
2-44	8/1/38	Fletcher's	Fletcher's	Miami	120.00
2-127	1/3/31	E. R. Wadley	Beach Club Restaurant	Palm Beach	90.00
2-202	1/1/34	Illegible	The Patio Restaurant	Palm Beach	100.00
2-204	1/1/33	N. L. Dennis	Park Cafeteria & Grill	St. Petersburg	45.00
2-1520	12/15/34	Childs Co. of Providence	Childs	Miami	175.00

NYC

PLAINTIFFS' DEPOSITION EXHIBIT 28

Agreement between Society and Jack Broome of Reef Grill. This exhibit is identical in form with Exhibit "H" to the Bill of Complaint.

[fol. 1653]

PLAINTIFFS' DEPOSITION EXHIBIT 29

Florida

Dance Halls in Effect as of 6/9/37

Acct. No.	Date of Contract	Licensee	Name of Dance Hall	Location	Annual Fee
4-1	12/ 1/34	Martin Schwarz	Bavarian Hall	Miami	\$120.00
4-4	1/ 1/37	P. W. Vignaux	Anna Maria Pavilion	Anna Maria	60.00
4-5	1/ 2/35	John W. Booth	Gulfport Casino	Gulfport	120.00
4-6	1/ 1/36	T. B. Palmer	Carboul Yacht Club	Clearwater	45.00
4-7	1/29/37	Fred A. Hancock	The Paradise	Jacksonville	180.00
4-8	12/ 2/35	John S. Taylor, Jr.	Clearwater Beach Trailer Park	Clearwater	180.00
4-10	1/ 1/36	Eddie Doolittle	Rainbow Tavern	Miami	15.00
4-11	1/ 3/37	Safety Harbor Sanatorium, Inc.	Espritu Santo Springs Pavilion	Safety Harbor	37.50
4-12	1/ 1/37	A. E. Bagnall	Recreation Park	Tallahassee	60.00
4-13	5/ 5/34	Surfside Amusement Co.	Jacksonville Beach Pier	Jacksonville Beach	125.00
4-14	1/15/37	Herbert R. Boomhower	Casa Madrid	Sarasota	37.50
4-16	5/15/36	H. B. Page	Wisteria Gardens	Floridatown	60.00
4-18	1/10/37	Clifford Phillips	The Barn	Miami	60.00
4-19	6/13/36	Thomas E. Brooks	Tower Beach Casino	Fort Walton	30.00
4-20	6/13/31	Pensacola Bridge Corp.	Pensacola Beach Casino	Pensacola	120.00
4-22	9/ 1/36	L. B. Herdrin	Hardy's	Miami	100.00
4-24	1/ 1/37	J. O. Whitehurst	Oscar's Night Club	Panama City	60.00
4-25	1/ 1/37	C. L. Wilkins	Scenic Terrace	E. Pensacola Heights	120.00
4-26	3/13/33	The Deuces	The Deuces Dance Hall	Jacksonville	120.00
4-29	4/ 3/37	Chas. H. Deeb	Cotton Club	Tallahassee	180.00
4-53	10/ 2/28	Edward Bang	Pier Casino	Daytona Beach	156.00
4-221	7/ 4/33	Harry Winchell	St. Petersburg Coliseum	St. Petersburg	180.00

PLAINTIFF'S DEPOSITION EXHIBIT 30

Florida

Dance Halls in Effect as of 6/12/39

Acct. No.	Date of Contract	Licensor	Name of Dance Hall	Location	Annual Fee
4-1	5/1/39	H. W. Diaz	Sulphur Springs Altus Ball Room	Tampa	\$120.00
4-2	12/1/38	J. H. Elliott	Lake Worth Casino	Lake Worth	40.00
4-3	6/1/38	R. G. Green	Magnolia Inn	Fort Walton	30.00
4-4	1/1/37	P. W. Vignaux	Anna Maria Pavilion	Anna Maria	60.00
4-5	1/2/35	John W. Booth	Gulfport Casino	Gulfport	120.00
4-6	1/1/36	T. B. Palmer	Carouel Yacht Club	Clearwater	45.00
4-7	1/1/39	William Loomis	Harmony Inn	Plant City	45.00
4-11	2/10/39	L. D. Berry	L. D.'s Barn Tavern	Palm Bay	15.00
4-12	11/1/38	W. R. Stambaugh	Palais Royal Ballroom	St. Petersburg	60.00
4-15	6/25/38	Mrs. Eola A. Mack	Frolic Club	Orlando	60.00
4-16	5/15/36	H. B. Pace	Wisteria Gardens	Floridatown	60.00
4-20	6/13/31	Pensacola Bridge Corp.	Pensacola Beach Casino	Pensacola	120.00
4-22	9/1/36	L. B. Herdrin	Hardy's	Miami	100.00
4-24	1/1/37	J. O. Whitehurst	Oscar's Night Club	Panama City	60.00
4-25	9/1/37	G. R. Jordan	Club Scenic Terrace	Pensacola	60.00
4-26	3/13/33	The Deuces	The Deuces Dance Hall	Jacksonville	120.00
4-53	10/2/28	Edward Bang	Pier Casino	Daytona Beach	156.00
4-221	7/4/33	Harry Winchell	St. Petersburg Coliseum	St. Petersburg	180.00

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PLAINTIFFS' DEPOSITION EXHIBIT 31

Agreement between Society and H. W. Diaz. This agreement is identical in form with Exhibit "H" to the Bill of Complaint.

[fol. 1655]

PLAINTIFFS' DEPOSITION EXHIBIT 32

Florida

Miscellaneous in Effect as of 6/9/37

Acct. No.	Date of Contract	Licensee	Name of Establishment	Location	Annual Fee
5-3	1/1/37	Geo. W. Sutcliffe	Morey's Bar	Miami Beach	\$120.00
5-5	3/20/37	E. A. Stouf	Rockywater Park	Eau Gallie	20.00
5-6	12/1/34	West Florida Racing & Athletic Assn. Inc.	Sulphur Spgs. Station	Tampr.	180.00
5-7	3/3/34	P. B. Rupp	Lafayette Tourist Camp	Sarasota	120.00
5-9	6/1/34	Ringling Bros.-Barnum & Bailey Combined Shows, Inc.	Ringling Bros.	Sarasota	450.00
5-10	11/14/34	Thorne-Shaw, Inc.	Midway Tourist Camp	Melbourne	80.00
5-11	10/1/36	Jimmie's Bar Liquor Store & Grill	Jimmie's Bar	Miami	180.00
5-12	12/6/35	J. E. Brooks	St. Petersburg Kennel Club	St. Petersburg	180.00
5-13	12/22/34	Henry Mansfield, Treas.	Bath Club	Miami Beach	87.50
5-14	12/1/34	Biscayne Kennel Club, Inc.	Biscayne Kennel Club	Miami	198.00
5-15	2/16/35	Palm Yacht Club, Inc.	Royal Palm Club	Miami	450.00
5-17	1/7/35	Jacksonville Kennel Club Inc.	Jacksonville Kennel Club	Jacksonville	142.00
5-18	10/1/36	Tampa Fla. Brewery, Inc.	Sound Truck	State of Florida	120.00
5-19	1/8/37	Will V. Duyr	Palm Island Club	Miami Beach	250.00
5-20	1936 sea.	Jesse Armstrong	Club Boheme	Hollywood	50.00
5-21	1/5/35	John E. Mack	Hollywood Yacht Club	Hollywood	75.00
5-22	12/29/34	Broward County Kennel Club Inc.	Broward County Kennel Club	Hollywood	160.00
5-23	1/1/37	Mother Kelly's Inc.	Mother Kelly's	Miami Beach	180.00
5-24	9/14/35	Angus Merritt	Sound Truck	State of Florida	30.00
5-25	9/2/36	Wagner Brewing Co.	Sound Truck	State of Florida	120.00
5-26	4/1/35	Mighty Haag Show (H. A. Haag)	Mighty Haag Show	Itinerant	75.00
5-27	12/29/34	Hugh McKay	Frolics Club	Miami	150.00
5-28	5/15/36	A. T. Williams	Coliseum Skating Rink	Tampa	180.00

5-29	1/18/34	Bouche's Villa Venice, Inc.	Bouche's Villa Venice.	Miami Beach.	150.00
5-31	12/1/34	C. O. Lowe.	Lowe's Camp.	St. Petersburg.	10.00
5-33	10/1/36	Tampa Fla. Brewery, Inc.	Sound Truck.	State of Florida.	120.00
5-34	1/1/36	Arena Bar, Inc.	Arena Bar.	Miami.	20.00
5-35	1/1/37	Five O'clock Club, Inc.	Five O'clock Club.	Miami Beach.	100.00
5-36	12/25/35	Gallagher's, Inc.	Gallagher's Bar.	Miami Beach.	40.00
5-37	1/1/36	G. A. McArthur, Jr.	McArthur's Hawaiian Hut.	Miami Beach.	60.00
5-38	1/1/36	Roy Edward Pushee.	Roy's Bar.	Miami Beach.	60.00
5-39	2/16/36	Capt. Wm. A. Albury.	Yacht 7 Seas.	Miami.	15.00
5-40	1/1/35	West Flagler Kennel Club.	West Flagler Kennel Club.	Miami.	201.00
5-41	1/13/37	French Casino of Florida, Inc.	French Casino.	Miami Beach.	300.00
5-42	12/28/35	Myer Goldberg.	Sanford Orlando Kennel Club.	Longwood.	300.00
5-43	1/1/37	Yacht Machusla.	Yacht Machusla.	Miami.	15.00
5-45	2/1/36	Gulf Bays Amusement Corp.	Pleasure Boat "Moonglo".	St. Petersburg.	180.00
5-46	10/1/35	Tom Williams.	Club Bagdad.	Hialeah.	240.00
5-48	2/15/36	Sydney Mander.	Viking Club.	Miami.	15.00
5-50	4/26/34	Sanders Beach Co.	Sanders Beach Dance Pavilion.	Pensacola.	75.00
5-51	11/17/34	J. S. Brooks.	Brooks Tourist Camp.	Sarasota.	120.00
5-52	1/1/37	Samuel J. Boyce.	Hollywood Country Club.	Hollywood.	150.00
5-53	12/25/36	Piccadilly Club, Inc.	Piccadilly Club.	Miami Beach.	180.00
5-54	12/1/36	R. R. Ried.	Reid's Marine Terrace.	Miami.	100.00
5-55	1/16/36	John Prete.	Town Casino Club.	Miami Beach.	125.00
5-57	1/1/37	Park Inn, Inc.	Park Inn.	Clearwater.	180.00
[col. 1656]					
5-58	1/1/37	Guy M. Helton.	Log Cabin.	Fort Lauderdale.	37.50
5-59	1/30/37	Isadore Glick.	Seminole Bar.	Hialeah.	45.00
5-60	1/1/37	Ajax Amusements, Inc.	Embassy Club.	Jacksonville.	300.00
5-61	2/6/37	J. M. Bean.	Ball and Chain.	Miami.	40.00
5-62	1/1/37	Biscayne Bar, Inc.	Biscayne Bar.	Miami.	120.00
5-63	1/1/37	Blue Ribbon Spa, Inc.	Blue Ribbon Spa.	Miami.	50.00
5-65	12/15/36	Dominick La Sala.	Empire Bar.	Miami.	52.50
5-66	12/1/36	Tom Heeney.	Tom Heeney's Bar.	Miami Beach.	120.00
5-67	1/1/37	Jeff's Bar, Inc.	Jeff's Bar, Inc.	Miami.	60.00
5-68	11/1/36	Mrs. Al Youst.	La Paloma Club.	Miami.	90.00
5-69	12/18/36	Nathan Levine.	Minsky's Burlesque.	Miami Beach.	73.00
5-70	11/17/36	Cabana Hotel Corp.	Riptide Club.	Miami Beach.	110.00
5-73	1/1/37	Bill Smith.	White Horse Bar.	Miami.	40.00
5-74	1/1/36	Times Square Club.	Times Square Club.	Miami.	140.00

PLAINTIFFS' DEPOSITIONS EXHIBIT 32-Continued

Acct. No.	Date of Contract.	Licensor	Name of Establishment	Location	Annual Fee
5-75	1/1/37	Mac's Tavern	Mac's Tavern	Vero Beach	120.00
5-76	3/13/37	Fred W. Cullington	Bayside Inn	Tampa	60.00
5-78	12/1/31	Peninsular & Occidental Steamship Company	Steamship Governor Cobb	Florida	50.00
5-83	5/1/30	City of St. Petersburg	St. Petersburg Casino	St. Petersburg	180.00
5-99	1/16/30	E. F. Killm.	Miami Jockey Club	Hialeah	150.00
5-105	4/11/33	L. Otis Mote	Orlando Winter Visitors Club	Orlando	a day 7.50
5-135	12/26/32	O. M. Carmichael	Palm Beach Kennel Club	W. Palm Beach	100.00
5-158	1/1/30	Peninsular & Occidental Steamship Company	Steamship Cuba	Florida	100.00
5-502	12/30/33	Gables Racing Association, Inc.	Tropical Park	Coral Gables	200.00
5-506	1/1/34	Hattie Killian	Oceanic Gardens	Miami Beach	75.00
5-510	1/15/34	H. Bennett	Miami Beach Kennel Club	Miami	165.00
5-514	11/1/33	Prof. F. W. Kehl	German Society of Miami, Inc.	Miami	150.00

PLAINTIFFS' DEPOSITION EXHIBIT 33

Florida

Miscellaneous in Effect as of 6/12/39

Acct. No.	Date of Contract	Licensor	Name of Establishment	Location	Annual Fee
5-1	6/30/38	Beach Bar, Inc.	El Chico Bar & Restaurant	Miami Beach	\$180.00
5-2	12/27/38	Richard Berenson	Biscayne Fronton	Hialeah	50.00
5-3	8/1/38	Hia Tolstoy	Marineland Studios, Inc.	St. Augustine	180.00
5-4	4/1/38	Harry Warner	Davis Island Coliseum	Tampa	120.00
5-5	3/20/37	E. A. Stout	Rockwater Park	Eau Gallie	20.00
5-6	12/1/34	West Florida Racing & Athletic Association, Inc	Sulphur Springs Station	Tampa	180.00
5-7	12/1/38	Eagles Nest, Inc.	Eagles Nest	Belleair	75.00
5-8	12/28/38	Don Lanning	Don Lanning's Tavern	Miami	35.00
5-9 NYC	6/1/34	Ringling Bros.-Barnum & Bailey Combined Shows, Inc.	Ringling Bros.	Sarasota	450.00
5-9	4/1/38	M. J. Waskow	Mike's	W. Palm Beach	180.00
5-10	11/14/34	Thorne-Shaw, Inc.	Midway Tourist Camp	Melbourne	80.00
5-11	10/1/36	Jimmie's Bar, Liquor Store & Grill	Jimie's Bar	Miami	180.00
5-12	12/6/35	J. E. Brooks	St. Petersburg Kennel Club	St. Petersburg	180.00
5-13	12/22/34	Henry Mansfield	Bath Club	Miami Beach	87.50
5-14	12/1/34	Biscayne Kennel Club, Inc.	Biscayne Kennel Club	Miami	198.00
5-15	2/16/35	Palm Yacht Club, Inc.	Royal Palm Club	Miami	450.00
5-16	4/15/38	D. A. Davis	Windmill	Jacksonville	180.00
5-17	1/7/35	Jacksonville Kennel Club, Inc.	Jacksonville Kennel Club	Jacksonville	142.00
5-18	10/1/36	Tampa Florida Brewery, Inc.	Sound Truck	State of Florida	120.00
5-19	3/1/39	Estate of Wallace A. Fuhrmann	Sundown Club (Formerly—Wally's St. Petersburg Beach Bar & Grill)	St. Petersburg Beach	180.00
5-20	1936 season	Jesse Armstrong	Club Boheme	Hollywood	50.00
5-21	4/1/39	O. H. Nims	Brass Rail	St. Petersburg	75.00
5-22	12/29/34	Broward County Kennel Club, Inc.	Broward County Kennel Club	Hollywood	160.00
5-23	1/1/39	Norman Meisenhelter	Mother Kelly's	Miami	180.00
5-24	1/1/39	J. R. Brown	Metropolitan Grill	Miami	30.00
5-25	9/2/36	Wagner Brewing Company	Sound Truck	State of Florida	120.00
5-26	4/1/35	Mighty Haag Show (H. A. Haag)	Mighty Haag Show	Itinerant	75.00
5-28	12/1/38	Brooks Hurst	Sweetstakes Club	Miami	40.00
5-29	1/1/39	Brownie Robertson	Club Brownie	Ft. Lauderdale	30.00
5-30	1/1/38	Esquire Bar	Esquire Bar	Miami	50.00

PLAINTIFFS' DEPOSITION EXHIBIT 33—Continued

Acct. No.	Date of Contract	Licensee	Name of Establishment	Location	Annual Fee
5-31	12/1/34	C. O. Lowe.	Lowe's Camp	St. Petersburg	10.00
5-32	12/21/38	Coral Club, Inc.	Coral Club	Ft. Lauderdale	52.50
5-33	10/1/36	Tampa Florida Brewery, Inc.	Sound Truck	State of Florida	120.00
5-34	1/1/36	Arena Bar, Inc.	Arena Bar	Miami	20.00
5-35	1/1/37	Five O'clock Club, Inc.	Five O'clock Club	Miami Beach	100.00
5-36	1/1/39	Mrs. R. H. Rogers	Pony Club	Ft. Lauderdale	60.00
5-37	1/13/39	D. L. Seybert	Circle Bar & Grill	Hollywood	20.00
5-38	1/1/39	Samuel Barnett	Derby Bar	Miami Beach	30.00
5-39	2/16/36	Capt. Wm. A. Albury	Yacht 7 Seas	Miami	15.00
5-40	1/1/35	West Flagler Kennel Club	West Flagler Kennel Club	Miami	201.00
5-41	12/17/38	Illegible	Pelican Club	Palm Beach	60.00
5-43	1/1/37	Yacht Machusia	Yacht Machusia	Miami	15.00
5-45	1/1/38	El Chico, Inc.	El Chico	Tampa	180.00
5-46	1/1/39	Mrs. E. Lasser	Red Wood Inn	Tampa	90.00
5-47	11/10/38	J. North	Dixie Inn	W. Palm Beach	85.00
5-48	2/15/36	Sydney Mander	Viking Club	Miami	15.00
5-49	3/24/39	Hippodrome Cigar Store, Inc.	Hippodrome Bar	Miami	60.00
5-50	1/1/39	Lew Mercour	Nat Club	Miami	240.00
5-51	10/1/38	Oscar Germany	Tom's Night Club	Pensacola	120.00
5-53	12/1/38	Reid's Marine Terrace	Reid's Marine Terrace	Miami	70.00
5-54	1/1/39	Vicks Bar, Inc.	Vicks Bar	Miami	30.00
5-55	1/1/39	Eugene R. Jones	Venetian Skating Rink	Miami	60.00
[fol. 1657a]					
5-56	1/1/39	Capt. George M. Stevens	Boat New River	Miami	\$ 75.00
5-57	1/1/37	Park Inn, Inc.	Park Inn	Clearwater	180.00
5-58	1/1/39	Sam Friedman	Polo Club, Bar	Miami Beach	45.00
5-59	1/1/39	Isidore Glick	Seminole Bar	Hialeah	30.00
5-60	4/1/39	Eddie Doolittle	Rainbow Tavern	Miami	60.00
5-61	2/6/37	J. M. Dean	Ball & Chain	Miami	40.00
5-62	12/30/38	Mrs. Claudia T. Hill	Biscaynebar	Miami	45.00
5-63	12/1/38	Belmont Bar & Package Store	Belmont Club	Miami Beach	90.00
5-64	1/1/39	D. J. Casey	Caseys Bar	Miami Beach	60.00
5-65	12/15/36	Dominick La Sala	Empire Bar	Miami	52.50
5-66	1/1/39	Mrs. Tom Heeney	Tom Heeney's Bar	Miami Beach	30.00
5-67	1/1/37	Jeff's Bar, Inc.	Jeff's Bar, Inc.	Miami	60.00

5-68	1/11/39	Gay Nineties, Inc.	Gay Nineties	Miami Beach	80.00
5-69	12/18/36	Nathan Levine	Minsky's Burlesque	Miami Beach	73.00
5-70	1/1/39	Cabana Hotel Corporation	Riptide Club & Bar	Miami Beach	75.00
5-71	10/1/38	Swartz, Inc.	Life Bar	Miami Beach	80.00
5-72	12/26/38	George Pomerantz	Oceanic Gardens	Miami Beach	40.00
5-73	12/25/38	Club Continentale (Thomas A. Cassav)	Club Continentale	Miami Beach	100.00
5-74	1/1/36	Times Square Club	Times Square Club	Miami	140.00
5-75	12/14/38	Mel Operating Company	The Drum	Miami	108.00
5-76	1/27/39	Brook Club, Inc.	Brook Club	Miami Beach	30.00
5-77	1/15/37	K. R. Shipbaugh	Manhattan Cocktail Lounge	Sarasota	180.00
5-78	12/1/31	Peninsular & Occidental Steamship Company	Steamship Governor Cobb	Florida	50.00
5-79	10/1/38	C. H. Smith	Click Bar	Miami Beach	80.00
5-80	1/1/39	G. M. Austin	Midway Tavern	Pompano	45.00
5-81	12/2/38	Jordan Corp.	Bill Jordan's Bar of Music	Miami Beach	160.00
5-82	1/1/39	C. S. Ward	Flag Recreation Center	Jacksonville Beach	60.00
5-83	1/1/39	Palm Lake Development, Inc.	La Paloma Club	Miami	240.00
5-84	1/28/39	Nunnally Co.	Nunnally's	Miami Beach	45.00
5-85	1/12/39	Mrs. O. Bruno	Patio Moresque	Miami Beach	75.00
5-86	1/15/39	M. V. Chrest	Chrest Bar & Grill	Hollywood	45.00
5-87	1/1/39	Mrs. Margaret White	Pig & Sax Grill	Miami	17.50
5-88	12/15/38	Governor's Club	Governor's Club	Lauderdale	60.00
5-89	12/14/38	George W. McGuire	Pastime Roller Rink	St. Petersburg	30.00
5-90	1/15/39	Lou Josephthal	Lou Bar	Miami Beach	30.00
5-91	2/1/39	A. P. Crooks	The Rendezvous	Ft. Lauderdale	22.50
5-92	5/1/30	City of St. Petersburg	St. Petersburg Casino	St. Petersburg	180.00
5-93	12/27/38	Richard Berenson	Biscayne Fronton	Miami	50.00
5-94	4/4/39	Capitol Gardens, Inc.	Capitol Garden Club	Tallahassee	40.00
5-95	1/1/39	A. E. Bagwell	Recreation Rink Park	Ft. Lauderdale	45.00
5-96	1/1/39	Seven Hundred Club	Seven Hundred Club	Tampa	90.00
5-97	6/1/39	L. J. Ford	Larry Ford's Bar	Hialeah	150.00
5-98	1/16/39	E. F. Killm	Miami Jockey Club	St. Petersburg	105.00
5-99	5/5/39	El Jorie, Inc.	The Chatterbox	Orlando	7.50
5-100	4/11/33	L. Otis Mote	Orlando Winter Visitors Club	W. Palm Beach	100.00
5-105	12/26/32	O. M. Carmichael	Palm Beach Kennel Club	Florida	100.00
5-158	1/1/30	Peninsular & Occidental Steamship Company	Steamship Cuba	Coral Gables	200.00
5-502	12/30/33	Gables Racing Association, Inc.	Tropical Park	Miami	165.00
5-510	1/15/34	H. Bennett	Miami Beach Kennel Club		

[fol. 1658] PLAINTIFFS' DEPOSITION EXHIBIT 34

Memorandum of agreement between Society and Ringling Brothers and Barnum & Bailey Show Combined. This contract is identical in form with Exhibit "H" to the Bill of Complaint.

PLAINTIFFS' DEPOSITION EXHIBITS 35, 36 AND 37

These exhibits consist of three form letters used by the Society in warning persons using their music for profit without a license to cease using the music or secure license, and explaining the claimed advantages of operating under the Society's license.

(Here follows 1 Photolithograph, side folio 1659)

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PLAINTIFFS DEPOSIT EXHIBIT 38

SCHEDULE OF NUMBER OF LBS IN EFFECT

CLASSIFIED AS TO STATES FROM DEC. 1922 TO DEC. 31, 1929

STATES	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939
ALABAMA	27	32	37	76	107	121	146	146	147	133	154	188	208	280	229	221	265	
ALABAMA						7	8	8	10	12	5	11	12	12	11	7	7	
ARIZONA	14	13	13	39	48	50	58	58	54	53	55	63	76	82	89	103	117	
ARKANSAS	25	15	15	84	110	116	138	147	123	90	100	123	155	159	172	188	220	
CALIFORNIA	548	638	888	714	809	901	1012	981	1004	1081	1084	1815	2034	2135	2043	2120	2122	
COLORADO	111	118	146	134	238	243	283	246	233	188	234	271	297	318	384	322	348	
CONNECTICUT	91	138	155	186	212	212	199	198	184	194	189	190	288	372	415	375	415	
CUBA										44	44	44	44	44	44	44	50	50
DELAWARE	10	15	24	23	28	25	37	41	40	37	37	41	47	58	58	52	59	
DIST. COLUMBIA	30	81	83	102	96	97	86	85	85	77	85	80	83	89	108	114	122	
FLORIDA	46	63	84	158	222	195	178	200	217	230	242	291	318	387	430	425	503	
GEORGIA	80	82	90	112	158	177	199	211	197	192	198	245	252	289	281	281	331	
HAWAII									1	48	48	48	48	54	51	55	55	
IDaho	17	31	52	85	81	72	84	87	84	105	99	134	141	180	148	153	171	
ILLINOIS	447	514	588	745	911	1055	1089	1040	982	982	1004	1288	1548	1801	1743	2003	2171	
INDIANA	483	448	559	571	583	588	575	552	581	508	580	713	738	630	684	509	958	
IOWA	111	170	215	382	558	587	829	805	584	488	480	501	484	504	538	504	505	
KANSAS	39	40	51	340	537	545	638	684	702	612	677	680	682	803	513	512	520	
KENTUCKY	81	148	188	192	210	285	288	233	212	179	176	179	212	257	251	283	301	
LOUISIANA	98	101	146	177	215	279	309	300	313	193	215	128	289	387	302	382	482	
MAINE	137	189	189	228	218	203	211	204	197	185	157	128	113	117	137	141	128	
MARYLAND	208	286	237	237	242	305	302	303	320	323	304	338	331	380	535	514	527	
MASSACHUSETTS	488	487	502	580	531	540	583	552	535	505	532	501	521	455	502	542	779	
MICHIGAN	211	198	382	437	584	685	785	831	949	945	799	1011	1231	1315	1379	1363	1433	
MINNESOTA	107	404	420	475	470	482	515	505	372	438	374	321	508	548	712	748	885	
MISSISSIPPI	27	31	33	45	72	108	130	141	140	82	81	81	88	88	82	101	188	
MISSOURI	378	275	288	437	570	558	805	772	539	577	582	554	632	583	524	558	950	
MONTANA	7	20	18	23	30	34	48	73	55	55	54	54	181	179	208	211	205	
NEBRASKA	31	43	108	219	282	318	348	384	485	485	433	387	421	404	387	374	380	
NEVADA	5	2	2	2	2	1	17	22	25	25	25	21	27	37	45	50	57	
N. HAMPSHIRE	123	118	112	150	133	131	130	138	135	134	123	105	110	104	118	148	148	
NEW JERSEY	118	188	288	485	484	484	530	570	584	544	582	541	485	544	519	587	1223	
NEW MEXICO			21	31	32	34	48	50	50	45	52	45	51	77	83	108	108	
NEW YORK	1081	1217	1333	1855	1830	1735	1884	1958	2280	2210	2011	1943	2247	2888	2831	3113	3285	
N. CAROLINA	28	84	105	128	148	171	188	182	171	152	118	154	252	285	325	347	379	
N. DAKOTA	1	10	52	88	102	111	114	100	101	75	85	84	103	91	87	84	92	
OHIO	288	513	782	888	1085	1108	1138	1251	1308	1178	1158	1258	1330	1452	1590	1680	2237	
OKLAHOMA	47	25	30	52	285	338	254	289	310	387	322	217	288	287	308	358	362	
OREGON	111	124	154	175	192	194	225	204	198	199	205	153	303	351	382	338	333	
PENNSYLVANIA	575	885	1022	1045	1173	1217	1338	1380	1588	1273	1138	1129	1218	1448	1748	1822	2305	
PORTO RICO										1	1	2	2	2	2	101	128	
RHODE ISLAND	54	88	88	74	81	81	78	80	73	73	73	85	88	80	70	104	137	
S. CAROLINA	22	23	24	39	45	52	60	72	74	86	85	102	140	141	143	157	181	
S. DAKOTA		8	42	103	143	167	171	187	180	134	125	115	131	144	141	180	178	
TENNESSEE	30	54	53	99	134	142	154	180	153	155	155	167	188	197	214	217	280	
TEXAS	288	188	177	484	520	580	580	758	971	555	530	622	722	894	1100	1187	1205	
UTAH		59	88	88	119	123	135	138	131	127	129	134	154	155	183	174	173	
VERMONT	54	55	53	57	55	50	54	55	75	74	85	83	81	82	84	85	84	

STATE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
N. HAMPSHIRE	123	118	112	108	133	131	130	138	138	134	123	108	110	104	118	148	148	181
NEW JERSEY	118	186	298	485	484	484	530	570	584	644	562	541	483	544	819	887	1223	1448
NEW MEXICO			21	31	32	34	48	50	58	48	52	45	51	77	53	108	108	123
NEW YORK	1081	1217	1333	1868	1830	1798	1884	1856	2250	2210	2011	1943	2247	2888	2831	3113	3285	3828
N. CAROLINA	28	84	108	128	148	171	188	182	171	182	118	154	252	285	325	347	379	418
N. DAKOTA	1	10	52	68	102	111	114	100	101	78	88	84	93	91	87	84	92	98
OHIO	288	813	782	888	1088	1108	1138	1251	1308	1178	1188	1288	1330	1482	1880	1880	2237	2328
OKLAHOMA	47	88	30	52	828	838	254	288	310	327	322	217	288	287	308	358	382	388
OREGON	111	184	184	178	192	194	288	204	198	188	208	183	303	351	382	338	333	380
PENNSYLVANIA	678	888	1032	1048	1173	1217	1338	1380	1888	1873	1138	1128	1218	1448	1748	1822	2308	2547
Puerto Rico											1	1	2	2	2	101	128	137
RHODE ISLAND	84	88	88	74	81	81	78	80	73	73	73	68	88	80	75	104	137	143
S. CAROLINA	22	23	24	28	40	52	80	72	74	68	86	102	140	141	143	157	181	185
S. DAKOTA		8	42	103	140	187	171	187	180	134	125	118	131	144	141	180	178	205
TENNESSEE	30	84	83	88	134	148	184	180	183	188	188	187	188	187	214	217	280	300
TEXAS	288	180	177	484	820	880	880	788	871	888	830	882	782	884	1100	1187	1808	1823
UTAH		88	88	88	118	123	138	138	131	127	128	134	154	185	183	174	173	180
VERMONT	84	88	83	87	85	80	84	85	75	74	88	83	81	82	84	85	84	88
VIRGIN ISLE.																	1	2
VIRGINIA	12	21	105	125	148	183	188	171	174	174	135	143	288	280	284	347	388	413
WASHINGTON	187	521	248	288	288	282	324	283	288	288	285	243	511	525	525	585	585	543
W. VIRGINIA	88	103	124	112	114	141	203	184	172	138	183	111	127	188	187	202	238	337
WISCONSIN	118	175	180	288	318	348	382	310	348	381	388	388	347	325	307	345	341	387
WYOMING		8	17	18	28	25	34	41	50	58	53	53	58	58	75	78	77	82
TOTALS	7007	8838	10888	13042	18318	18282	18833	18015	18888	18043	17008	17882	20723	23137	28023	28878	29817	32584

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[fol. 1660]

PLAINTIFFS' DEPOSITION EXHIBIT 39

Year	Florida			
	Revenue	Expense	Net	
1935.....	\$ 47,481.24	\$12,371.16	\$35,110.08	
1936.....	59,306.81	14,950.98	44,355.83	
1937.....	61,347.94	14,724.26	46,623.68	
1938.....	101,335.49	23,486.45	77,849.04	
1939.....	92,782.02	21,465.69	71,316.33	
1935.....	5,217.59	6,835.47	318.10	12,371.16
1936.....	6,728.58	7,672.33	550.07	14,950.98
1937.....	8,491.39	5,958.95	273.02	14,724.26
1938.....	14,612.34	8,774.71	99.40	23,486.45
1939.....	15,702.40	5,763.29		21,465.69

[fol. 1661]

PLAINTIFFS' DEPOSITION EXHIBIT 40

United States Bill for Radio*

Date	Time Sales	Talent Costs	Number of Sets Sold	Number of Tubes Sold
Jan. 1, 1936.....	\$86,000,000	\$25,000,000	5,700,000	39,000,000
Jan. 1, 1937.....	114,000,000	36,000,000	8,000,000	46,000,000
Jan. 1, 1938.....	125,000,000	40,000,000	7,700,000	40,000,000
Jan. 1, 1939.....	140,000,000	30,000,000	6,000,000	33,000,000
Jan. 1, 1940.....	170,000,000	35,000,000	9,000,000	45,000,000

* Taken from figures in Radio Today of January 1, 1936; January 1, 1937, page 14; January 1, 1938, Part 2; January 1, 1939, page 12. January 1, 1940, page 11.

[fol. 1662]

PLAINTIFFS' DEPOSITION EXHIBIT 41

Radio Homes in the State of Florida*

	Date	Florida Total	U. S. Total	% of U. S. Total
(1)	April, 1930.....	58,128	12,048,762	.48
(2)	Jan. 1, 1934.....	151,328	17,948,162	.84
(3)	Jan. 1, 1935.....	200,674	21,455,799	.93
(4)	Jan. 1, 1936.....	216,500	22,501,670	.96
(5)	Jan. 1, 1937.....	250,000	24,500,000	1.02
(6)	Jan. 1, 1938.....	263,000	25,804,300	1.01
(7)	Jan. 1, 1939.....	308,900	27,500,000	1.12

* Figures taken from Radio Today, January issues; also Broadcasting Yearbook, 1935-1937.

- (1) 1935 Broadcasting Yearbook, p. 98.
- (2) 1935 Broadcasting Yearbook, p. 98.
- (3) 1936 Broadcasting Yearbook, p. 14.
- (4) 1937 Broadcasting Yearbook, p. 35.
- (5) January, 1937, Radio Today, p. 14.
- (6) January, 1938, Radio Today, Part 2.
- (7) January, 1939, Radio Today, p. 13.

[Vol. 1663]

PLAINTIFFS' DEPOSITION EXHIBIT 42
Retail Radio Sales in the United States, 1922-1937

Figures Taken from Broadcasting Yearbook, 1938

	Total Sets		Total Tubes Sold		Motor Car Sets		Grand Total; Sales of Radio Apparatus for Broadcast Reception		Homes with Radio Sets		Auto sets in Use		Total Radio Sets in Use in U. S.	
	Number	Value	Number	Value	Number	Value	Value	Value	Number	Number	Number	Number	Number	Number
1922.....	100,000	\$5,000,000	1,000,000	\$6,000,000	.....	.....	\$60,000,000	60,000	.....	.....	.....	.....	**400,000	.....
1923.....	550,000	15,000,000	4,500,000	12,000,000	.....	.....	136,000,000	1,500,000	.....	.....	.....	.....	**1,000,000	.....
1924.....	1,500,000	100,000,000	12,000,000	36,000,000	.....	.....	358,000,000	3,000,000	.....	.....	.....	.....	2,500,000	.....
1925.....	2,000,000	165,000,000	20,000,000	48,000,000	.....	.....	430,000,000	4,000,000	.....	.....	.....	.....	3,500,000	.....
1926.....	1,750,000	200,000,000	30,000,000	58,000,000	.....	.....	506,000,000	5,000,000	.....	.....	.....	.....	5,000,000	.....
1927.....	1,350,000	168,000,000	41,000,000	67,300,000	.....	.....	425,000,000	4,250,000	.....	.....	.....	.....	6,500,000	.....
1928.....	3,261,000	400,000,000	50,200,000	110,250,000	.....	.....	690,550,000	7,500,000	.....	.....	.....	.....	8,500,000	.....
1929.....	4,428,000	600,000,000	69,000,000	172,500,000	.....	.....	842,548,000	9,000,000	.....	.....	.....	.....	10,500,000	.....
1930.....	3,827,300	300,000,000	52,000,000	110,600,000	34,000	\$3,000,000	496,432,000	12,048,762	.....	.....	.....	.....	13,500,000	.....
1931.....	3,420,000	225,000,000	53,000,000	69,550,000	106,000	5,940,000	300,000,000	14,000,000	.....	.....	100,000	.....	15,000,000	.....
1932.....	3,000,000	140,000,000	42,300,000	48,720,000	143,000	7,150,000	200,000,000	16,808,562	.....	.....	250,000	.....	18,000,000	.....
1933.....	3,896,000	230,099,000	59,000,000	49,000,000	724,000	28,598,000	300,000,000	20,402,399	.....	.....	500,000	.....	22,000,000	.....
1934.....	4,084,000	270,000,000	58,000,000	36,000,000	780,000	28,000,000	350,000,000	21,456,000	.....	.....	1,250,000	.....	23,000,000	.....
1935.....	6,026,800	330,192,480	71,000,000	50,000,000	1,125,000	54,562,500	370,000,000	22,869,000	.....	.....	2,000,000	.....	25,000,000	.....
1936.....	8,248,000	450,000,000	98,000,000	69,000,000	1,412,000	69,188,000	500,000,000	24,800,000	.....	.....	3,500,000	.....	33,000,000	.....
1937.....	7,700,000	450,000,000	101,000,000	85,000,000	1,750,000	87,500,000	537,000,000	26,000,000	.....	.....	5,000,000	.....	37,000,000	.....

* Figures for sets include value of tubes in receivers.

** Includes home-built sets.

[fol. 1664] PLAINTIFFS' DEPOSITION EXHIBIT 43.

34845

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

June 28, 1939.

The Federal Communications Commission today released a series of tables covering the economic status of broadcast licensees for the year 1938. The data was compiled by the Accounting, Statistical and Tariff Department of the Commission from information supplied by the licensees on Forms 705 and 706.

The tables show that there were 764 licenses and construction permits outstanding at the end of the year, classified as follows:

- 660 station reports used in the tabulations
- 40 construction permits
- 38 non-commercial stations
- 12 located in territories
- 14 not used because of defects in reporting

764 Total

The 660 stations reported in the tabulation include 240 stations from which not enough revenue was derived during the year to pay their actual expenses, including depreciation. Those 240 stations showed losses in the aggregate amounting to \$2,223,195. The 419 stations reporting profits showed broadcast income of \$16,728,533. One station reported neither a profit nor a loss for the year.

The tabulations include 175 stations each of whose time sales were less than \$25,000. As a group these 175 stations showed a loss, their aggregate broadcast revenues being \$2,520,026 and their aggregate expenses (inclusive of depreciation, taxes other than income taxes, etc.) \$2,870,729. However, certain of these stations showed a profit.

Other compilations from the reports show that 658 of the stations and networks had a payroll for the year amounting to \$45,663,757. Of this amount, \$4,239,470 was paid to officers of the licensee companies. As of December 31, 1938 these stations and networks employed a total of 23,060 persons, including staff musicians and other artists on the regular payroll.

[fol. 1665] During the week beginning December 11, 1938, there were 18,359 full-time employees with a total payroll for the week amounting to \$830,003. During the same week there were 4,377 part-time employees, drawing a total for the week in the amount of \$103,134. The average compensation for the week beginning December 11 was \$45.20 (18,359 employees), compared with \$45.12 (17,085 employees) for the week beginning March 6, 1938. For part-time employees, the average compensation was \$23.55 (4,377 employees) for the week beginning December 11, 1938, compared with \$18.97 (5,820 employees) for the week beginning March 6, 1938.

The tables as released by the Commission are in summary form and represent generally the information included in the tables released on June 6, 1938 for the year 1937. Those tables include balance sheets for the major networks and for the industry as a whole.

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FEDERAL COMMUNICATIONS COMMISSION
Accounting, Statistical, and Tariff Dept.
Washington, D. C.

34737 - 1

Combined income statement

3 major networks and licensees of 660 standard broadcast stations
(including 1 major network not the licensees of any such station)
as at the end of the year
1936

Particulars	Amount
(a) Revenues	
1. Network portion of network time sales	\$ 35,455,510
2. Time sales by stations	81,921,949
Less: payments to other stations	117,379,429
3. Total time sales by networks and stations	16,457,800
4. Indirect: Commission to agencies, representatives, and brokers	100,892,253
5. Net revenue received from sale of time	6,081,900
6. Miscellaneous sales and revenue services	3,278,636
9. Sustaining programs sold to stations	80,870
10. Total revenues of networks and stations	111,356,378
(b) Expenses	
1. Technical expenses	13,048,588
2. Program, talent, and communication line expenses (including sustaining programs purchased, royalties, and similar items)	38,196,994
3. Advertising, promotional, and selling expenses	9,963,136
4. General and administrative expenses	15,088,718
5. Other direct broadcast expenses	5,209,099
6. Indirect broadcast expenses (depreciation, amortization, taxes, uncollectible revenue, and rents)	10,997,079
7. Total broadcast expenses	92,503,594
(c) Broadcast income ((a) minus (b))	18,852,784
(d) 1. Income from broadcast assets leased to others	277,155
2. Total income from others who use licenses stations for their own time sales	928,215
(e) Income from general services to licensees	92,558
(f) Total income derived from activities related to broadcasting	20,153,115
(g) Income from business or activities other than broadcasting	53,672,999
(h) Extraordinary income amounts for the year (net debits)	(79,015)
(i) Total income from all sources reported	73,747,079
(j) Contractual payments to others from income	\$214,228
(k) State and Federal taxes on net income	11,522,636
(l) Net income from all sources for the year, after taxes	11,736,824
	62,010,215

Dividends declared (and withdrawals by partners and proprietors) during the year were reported by licensees in the amount of \$22,976,676.

1666

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FEDERAL COMMUNICATIONS COMMISSION

ACCOUNTING, STATISTICAL AND TARIFF DEPT.

WARNING, D.C.

Summary of Reasons for Denial of Request for Review filed in support with motion 15-11 (F. C. C. Rules of Practice and Procedure)

Signature: _____ Date: _____

Item	Group 1 Stations				Group 2 Stations				Group 3 Stations				Group 4 Stations				Group 5 Stations			
	(Col. 1)	(Col. 2)	(Col. 3)	(Col. 4)	(Col. 5)	(Col. 6)	(Col. 7)	(Col. 8)	(Col. 9)	(Col. 10)	(Col. 11)	(Col. 12)	(Col. 13)	(Col. 14)	(Col. 15)	(Col. 16)	(Col. 17)			
Stations affiliated with local networks																				
Stations with time sales of \$25,000 or more:	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3			
Number of stations	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3			
Revenue from the sale of station time:																				
to national networks	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750			
to regional networks	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000			
to stations	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000			
to national and regional networks	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750			
to local news	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
to other station time	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Total sale of station time	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750			
Debitations:																				
Debitations to networks and stations (from sale of time)	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Debitations to regularly established agencies	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Debitations to representatives, brokers, and others	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Total debitations from sale of station time	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000			
Balance, net time sales	102,580,750	102,580,750	102,580,750	102,580,750	102,580,750	102,580,750	102,580,750	102,580,750	102,580,750	102,580,750	102,580,750	102,580,750	102,580,750	102,580,750	102,580,750	102,580,750	102,580,750			
Incidental broadcast revenues:																				
Revenue from the sale and placing of talent	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Miscellaneous sales	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Total incidental broadcast revenues	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000			
Total broadcast revenues	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750			
Expenses:																				
Technical expenses	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Program expenses	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Advertising, promotional, and selling expenses	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
General and administrative expenses	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Other broadcast expenses	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Total broadcast expenses	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000			
Net broadcast revenues	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750			
Debitations from net broadcast revenues 1/	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Broadcast income	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750			
All commercial stations:																				
Number of stations	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3			
Broadcast revenues	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750	104,580,750			
Broadcast expenses	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000			
Net broadcast revenues	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750	99,580,750			
Debitations from net broadcast revenues 1/	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Broadcast income	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750	98,580,750			
Stations not affiliated with local networks																				
Stations with time sales of \$25,000 or more:	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3			
Number of stations	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3			
Revenue from the sale of station time:																				
to national networks	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750	88,322,750			
to regional networks	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000	12,157,000			
to stations	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000	3,300,000			
to national and regional networks	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750	103,779,750			
to local news	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
to other station time	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Total sale of station time	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750	105,580,750			
Debitations:															</					

Income items of selected groups of standard broadcast stations
1938
(including 23 N & O stations)

* Includes Rentals and Postage Sent Groups, required stations.
† Includes Association, circulation, Post Office, etc.

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FEDERAL COMMUNICATIONS COMMISSION
Accounting, Statistical, and Tariff Dept.
Washington, D. C.

Condensed general balance sheet

3 major networks and licensees of 660 standard broadcast stations
(including 1 major network not the licensee of any such station)
as at the end of the year
1938

Particulars	Amount
Asset side	\$
Current assets	408,133,556
Investment (at cost) in broadcast assets	\$72,961,659
Less: depreciation to date	26,183,672
Investment in assets other than broadcast (amortization)	46,777,987
Other asset side items	561,274,054
	52,154,304
Total asset side	1,068,339,901
Liability side	\$
Long-term debt	61,997,823
Current liabilities and accruals	80,784,658
Net worth	821,536,191
Other liability side items	104,021,229
Total liability side	1,068,339,901

Included in the amount of \$46,777,987 shown above as the net amount of broadcast assets there were reported by licensees the following:

Goodwill	\$11,526,179
Excess of purchase price of broadcast plant over its net book value in the hands of vendors	774,326
Total	\$12,240,505

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FEDERAL COMMUNICATIONS COMMISSION
Accounting, Statistical, and Tariff Dept.
Washington, D. C.

Condensed general balance sheet
Major networks
As at the close of the year
1938

Line No.	Item (a)	Balance at close of year (b)
ASSET SIDE:		
1	Investments--broadcast (see next sheet)	13,411,102
2	Investments--nonbroadcast	627,722
3	Total investments (net) (sum of lines 1 and 2)	14,038,824
4	Current assets (net)	13,045,668
5	Prepaid payrolls and other service charges	297,220
6	Deferred charges and unclassified debit balances	115,447
7	Assets not classified above	219,583
8	Total asset side	27,919,747
LIABILITY SIDE:		
9	Long-term debt	1,959,200
10	Current and accrued liabilities	10,040,413
11	Provisions for deferred payments, deferred credits and unclassified credit balances	181,025
12	For a corporation (a) Capital stock issued and outstanding \$ 6,997,697 (b) Capital surplus	43,462
	(c) Earned surplus	8,697,360
13	Total liability side	15,739,109
		27,919,747

FEDERAL COMMUNICATIONS COMMISSION
Accounting, Statistical, and Tariff Dept.
Washington, D. C.

Investment assignable to broadcast service
Major networks

As at the close of the year
1938

Line No.	Item	Amount
1	Owned broadcast plant in service of licensee (depreciated value)	\$
2	Allocated to network service	5,571,332
3	Allocated to M&O (key) stations service	862,912
4	Allocated to M&O (nonkey) stations service	628,572
5	Total	7,062,816
6	Improvements and replacements of broadcast plant leased from others (depreciated value)	
8	Allocated to M&O (key) stations service	
9	Allocated to M&O (nonkey) stations service	828,106
10	Total	1,639,563
11	Broadcast plant leased to others (depreciated value)	
12	Allocated to network service	89,921
13	Allocated to M&O (nonkey) stations service	2
14	Total	89,923
15	Other broadcast plant amounts	
16	Goodwill - allocated to network service	4,135,082
17	Plant under construction - allocated to network service	483,718
18	Total	4,618,800
19	Summary	
20	Network amount	
21	M&O (key) station amount	11,062,712
22	M&O (nonkey) station amount	901,710
23	Total	1,456,680
		13,411,102

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Aggregate cost to the present owners of all the foregoing items before depreciation \$22,116,096.

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[fol. 1672] PLAINTIFFS' DEPOSITION EXHIBIT 44.

34977

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

July 6, 1939.

The Federal Communications Commission today released an additional tabulation of data compiled from reports of networks and licensees of standard broadcast stations for the year 1938.

The table covers the combined income statements of the Columbia Broadcasting System, Inc., the National Broadcasting Company, Inc., and the Mutual Broadcasting System, Inc. The table also includes data concerning 23 standard broadcast stations which are operated either by or for the Columbia Broadcasting System or the National Broadcasting Company. Of these 23 managed and operated stations, 9 have been designated by the networks as key stations and 14 as non-key stations.

The operating expenses of the networks and the 9 key stations, as reported by the networks, are not susceptible of direct allocation to network operations on the one hand and to station operations on the other. Therefore, the division of the expenses between network operations, the amounts for which are shown in column 2, and the 9 key stations, the amounts for which are shown in column 3, reflects an arbitrary determination in several instances.

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(Here follow 4 Photolithographs, side folios 1673-1676)

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FEDERAL COMMUNICATIONS COMMISSION
Accounting, Statistical, and Tariff Dept.
Washington, D. C.

34951

Income Statement
3 major networks and 23 M & O (*) standard broadcast stations
(including 1 major network not employing any such station)
1938

July 1, 1939

Particulars (Col. 1)	Network operations (Col. 2) \$	M & O station operations			Grand total (Col. 6) \$
		9 Key stations (Col. 3) \$	14 Non-key stations (Col. 4) \$	Total stations (Col. 5) \$	
(a) Revenues					
1. Net time sales to advertisers (after trade discounts).....	54,938,879	-	-	-	54,938,879
a. Sale of station time to networks.....	-	2,804,948	2,542,440	5,347,388	5,347,388
b. Sale of station time to users.....	-	2,989,106	4,848,152	7,837,258	7,837,258
2. Received of other networks and stations for network broadcasting of their time sales to advertisers.....	-	-	-	-	-
3. Total time sales.....	54,938,879	5,794,054	7,390,592	13,184,646	68,123,525
4. Less-Portion of sales paid to other networks.....	496,858	-	-	-	496,858
a. Portion of sales paid to managed and operated key stations.....	2,804,948	-	-	-	2,804,948
b. Portion of sales paid to managed and operated nonkey stations.....	2,542,441	-	-	-	2,542,441
c. Portion of sales paid to independent stations.....	13,134,385	-	-	-	13,134,385
d. Portion of sales paid to foreign and territorial stations.....	504,737	-	-	-	504,737
Total payments to others for broadcast service.....	19,483,369	-	-	-	19,483,369
5. Balance: Net time sales to advertisers retained by networks.....	35,455,510	5,794,054	7,390,592	13,184,646	48,640,156
6. Sustaining program sales to stations.....	20,470	-	-	-	20,470
7. Sale of talent and booking commissions.....	2,381,964	-	388,818	388,818	2,770,782
8. Recoveries by networks from others on communication line charges.....	1,085,469	-	65,494	65,494	1,150,963
a. Other revenue incidental to broadcasting.....	1,451,947	-	96,477	96,477	1,548,424
9. Rent received from broadcast equipment and other fixed assets leased to others (included in (d) below).....	-	-	-	-	-
10. Total net time sales and other revenues of networks.....	40,395,360	5,794,054	7,941,381	13,735,435	54,130,795
11. Deduct: Commissions paid to agencies and brokers.....	8,165,742	437,208	665,278	1,102,486	9,268,228
12. Total revenues of networks and their M & O stations.....	32,229,618	5,356,846	7,276,103	12,632,949	44,862,567
(b) Expenses					
1. Technical expenses:					
a. Salaries and supervision.....	1,879,829	422,467	599,122	1,021,589	2,901,418
b. Cost of power.....	82,664	161,668	129,553	291,221	373,885
c. Other technical expenses.....	338,576	138,440	145,883	284,323	622,899
Total.....	2,301,069	722,575	874,558	1,597,133	3,898,202
2. Program expenses:					
a. Salaries and supervision (including expenses of announcers).....	2,284,165	278,279	462,353	740,632	3,024,797
b. Rent for communication lines.....	5,902,770	-	98,104	98,104	6,000,874
c. Talent expense.....	5,217,897	624,759	923,532	1,548,291	6,766,188
d. Royalties and license fees paid, relating to program material.....	489,307	79,392	398,922	478,314	947,621
e. Other expenses directly related to programs.....	978,842	116,960	98,583	215,043	1,193,985
Total.....	14,872,981	1,078,990	1,981,434	3,060,424	17,933,405
3. Advertising, promotional, and selling expenses:					
a. Salaries and supervision.....	1,765,534	209,261	272,768	482,029	2,247,563
b. Other expenses related directly to advertising, promotional, and selling.....	949,764	112,906	311,729	424,635	1,374,399
Total.....	2,715,298	322,167	584,497	906,664	3,621,962
4. General and administrative expenses:					
a. Executive expenses.....	931,715	115,947	222,894	334,801	1,270,516
b. Legal services.....	274,571	32,030	12,626	44,656	299,227
c. Other general and administrative expenses.....	2,449,438	284,359	193,544	477,903	2,927,341
Total.....	3,635,724	432,336	429,064	861,360	4,497,084
5. Other broadcast expenses:					
a. Salaries.....	445,048	55,136	83,402	138,538	583,586
b. Office supplies and services not reported elsewhere above.....	36,115	4,102	-	4,102	40,217
Total.....	481,163	59,238	83,402	142,640	623,803
6. Total standard broadcast expenses.....	24,006,235	2,615,306	3,952,915	6,568,221	30,574,456

5. Other broadcast expenses:					
a. Salaries	445,048	55,136	83,402	138,538	583,586
b. Office supplies and services not reported elsewhere above	36,115	4,102	-	4,102	40,217
Total	481,163	59,238	83,402	142,640	623,803
6. Total direct broadcast expenses	24,006,235	2,615,306	3,952,915	6,568,221	30,574,456
7. Depreciation of assets devoted to broadcasting	729,884	85,092	265,094	350,186	1,080,070
8. Amortization of intangible assets applicable to broadcasting	-	-	-	-	-
9. Taxes assignable to broadcast service (other than taxes on net income)	890,034	65,651	120,263	185,916	1,075,950
10. Plant losses assignable to broadcast service	9,282	1,242	-	1,242	10,524
11. Uncollectible broadcast revenues	11,710	1,567	2,270	3,837	15,547
12. Rent for broadcast plant leased from others	2,233,027	38,001	527,257	565,258	2,754,285
13. Total indirect broadcast expenses	3,873,937	191,553	914,886	1,106,439	4,980,376
14. Total expenses of networks and their M&O stations	27,880,172	2,806,859	4,867,801	7,674,660	35,554,832
(a) Net revenue from broadcast services	4,349,446	2,549,987	2,408,302	4,958,289	9,307,735
(d) Other income	-	-	-	-	174,751
(e) Gross income	-	-	-	-	9,482,486
(f) Deductions from income	-	-	-	-	985,090
(g) Net income before income taxes	-	-	-	-	8,497,396
(h) Estimated income taxes	-	-	-	-	-
1. Federal	-	-	-	-	1,473,796
2. State	-	-	-	-	19,900
(i) Net income for the period	-	-	-	-	7,003,700

* M & O stations are those from which net profit on sales of time inure to networks.

STATISTICS OF RADIO

UNCLE SAM'S ANNUAL BILL FOR RADIO

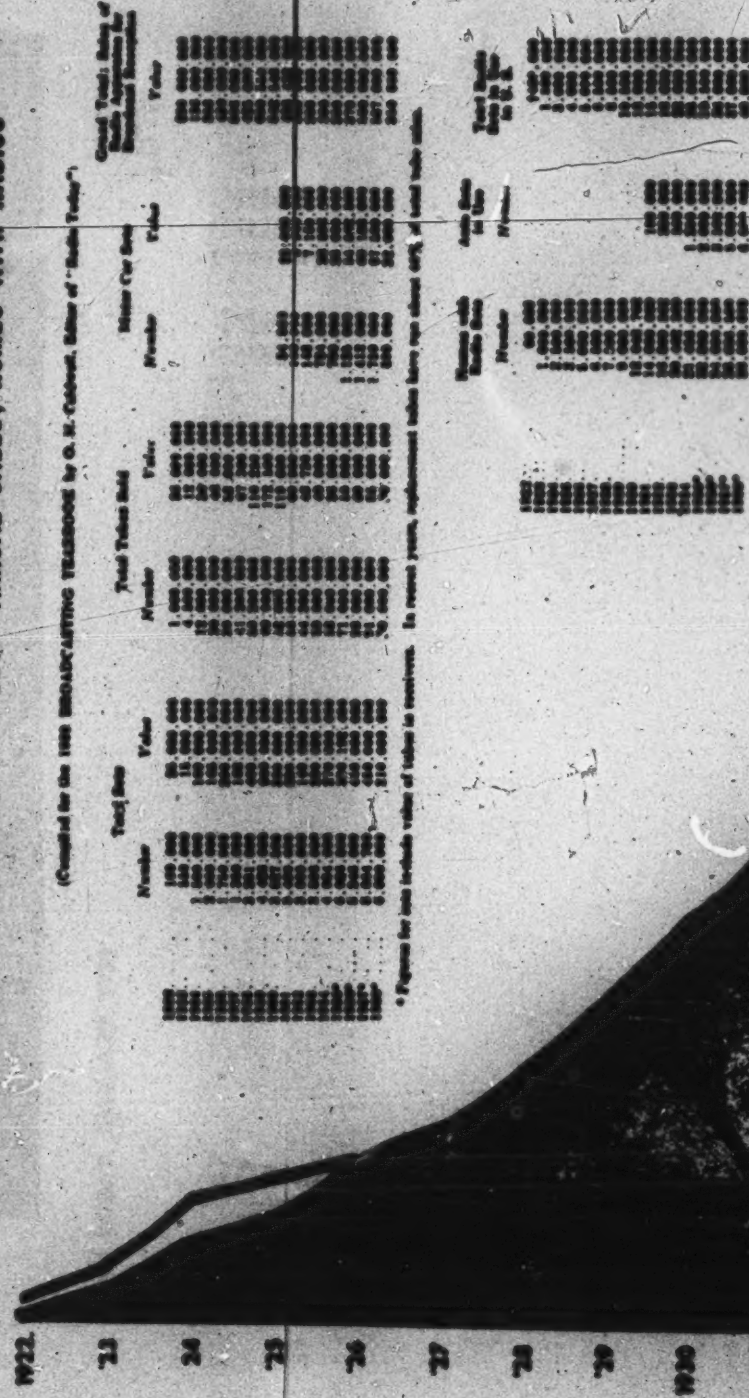
Sale of time by broadcasters, 1938	\$140,000,000
Talent costs, 1938	30,000,000
Electricity, batteries, etc., to operate 35,000,000 receivers	150,000,000
6,000,000 radio sets sold in 1938	\$10,000,000
33,000,000 replacement tubes	45,000,000
Radio parts, supplies, etc.	60,000,000
Servicing radio sets	
U.S. Public paid for radio in 1938	\$675,000,000

RADIO SETS IN USE

U.S. homes with radios	26,666,500	Jan. 1, 1938	27,500,000	Jan. 1, 1939
Extra and "second" sets in above	6,000,000		7,500,000	
Automobile radios in use	5,000,000		5,800,000	
Total radio sets in use, U.S.	37,666,500		40,800,000	
Total homes with autos	18,500,000		19,000,000	
Total residence telephones	18,000,000		13,950,000	
Total homes with electricity	92,500,000		94,000,000	
Total homes in U.S.	92,000,000		92,250,000	
Population U. S.	199,500,000		130,600,000	

THE GROWTH OF RADIO FROM 1922 TO 1939. ANNUAL SALES; HOMES WITH RADIOS

(Compiled for the 1939 BROADCASTING YEARBOOK by G. H. Coddens, Editor of "Radio Today")



* Figures for 1939 include value of tubes in receivers. In recent years, replacement tubes have represented about 60% of total radio sales.

Annual Sales
Heavy black lines in
units of \$100,000. Thin:
-132L \$132,000,000

1050B

RADIO TODAY, JANUARY, 1939
1674

TODAY

Radio Production, Sales, Utilization, as of Jan. 1, 1939. Industry Totals in Unit and Dollar Volume

RADIO-SET AND TUBE SALES, FOR YEAR 1938

	Number	Retail Value
Total radio sets sold during 1938	6,000,000	\$210,000,000
Radio sets exported	600,000	
Automobile radios	800,000	32,000,000
Home radios sold in U.S.	4,600,000	160,000,000
Cassette	1,000,000	62,000,000
Table models	3,500,000	85,000,000
Combinations	900,000	13,000,000
Home sets sold as replacements	2,100,000	84,000,000
Home sets sold to homes previously without radio	1,000,000	40,000,000
Home radios sold as extra sets	1,500,000	36,000,000
Battery sets	800,000	32,000,000
Tube replacements	33,000,000	40,000,000
Tube, initial equipment	35,000,000	43,000,000
Total tubes sold 1938 including exports	75,000,000	45,000,000
Parts, supplies		16,000,000
Photograph records		35,000,000

HOMES WITH RADIOS BY STATES

Ala.	387,700	Maine	210,100	Old	463,400
Ark.	91,100	Mass.	366,600	Ore.	990,900
Cal.	864,800	Mich.	1,038,900	R.	2,266,300
Col.	1,771,000	Miss.	1,044,300	S. C.	158,500
Conn.	843,500	Mo.	577,900	Tenn.	211,300
Del.	613,500	Neb.	775,000	Tex.	176,600
D.C.	308,500	N.J.	594,000	Va.	113,000
Fla.	308,500	N.Y.	29,900	W. Va.	90,350
Ga.	400,700	Pa.	1,063,000	Wash.	452,300
Ill.	1,915,100	R.I.	63,800	W. Va.	355,900
Ind.	841,900	S.D.	3,917,300	Wyo.	635,900
Iowa	598,600	N.C.	481,500	Total	90,900
Kan.	380,300	N.D.	182,100	U.S.	97,500,000
La.	514,900	Ohio	1,693,000		

ROLL-CALL OF RADIO INDUSTRY, JAN. 1, 1939

Manufacturers of radio receivers	116
Manufacturers of radio tubes	12
Manufacturers of radio parts	705
Manufacturers of test equipment	60
Manufacturers of broadcast and amateur equipment	102
Manufacturers of sound equipment	98
Radio-set and parts distributors	2,021
Manufacturers' agents	239
Retail outlets selling radios	58,000
Dealers doing 85% of radio business	14,000
Servicemen, including dealers' servicemen	40,000
Radio amateurs and experimenters	91,000
Broadcasting stations, Jan. 1, 1939 (operating)	763

SALES OF REPLACEMENT PARTS, 1938

At manufacturers' selling prices	Retail Value
Transformers	\$1,500,000
Condensers	\$1,500,000
Vibrators	\$750,000
Resistors	\$400,000
Volume controls	\$375,000
Speakers	\$300,000

SOUND SALES, 1938

Units	Retail Value
Sound systems (complete)	25,000
Microphones	55,000
Intercommunications	15,000
	\$35,000,000
	\$1,000,000
	\$500,000

6,000,000 SETS MANUFACTURED IN 1938



RADIO TODAY, JANUARY, 1939

1675

13

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RADIO *and Television* TODAY

STATISTICS OF THE INDUSTRY

U. S. Annual Radio Bill

Sale of time by broadcast, 1939	\$170,000,000
Talent costs	35,000,000
Electricity, batteries, etc., to operate	165,000,000
38,400,000 receivers	289,000,000
9,000,000 radios sold in 1939 at retail	45,000,000
36,000,000 replacement tubes @ \$1.25	50,000,000
Radio parts, supplies, etc.	60,000,000
Servicing radio sets	
U.S. Public paid for radio in 1939	\$814,000,000

Radio Sets in Use

	Jan. 1, 1939	Jan. 1, 1940
U.S. homes with radios	27,500,000	28,700,000
"Secondary" sets in above homes	7,500,000	9,800,000
Battery Portables	800,000	900,000
Auto-radios	5,800,000	6,500,000
Total sets in use, U.S.	40,800,000	45,900,000
Total homes in U.S.	38,950,000	39,000,000
Total homes with autos	19,000,000	20,500,000
Total residence telephones	13,250,000	13,500,000
Total homes with electricity	24,000,000	24,450,000

Radio Receivers—Sales and Volume in 1939

	Number	% of Total
Radio Consoles	1,900,000	21.1
Radio Compacts	4,550,000	50.5
Table Combinations	250,000	2.8
Console Combinations	200,000	2.2
Total Combinations	450,000	5.0
Portables	900,000	10.0
Auto Radio	1,200,000	13.3
Total Radio	9,000,000	....

Total Tubes.....91,000,000

	Average Value (Retail)	Total Retail Value	% of Total
U.S. homes with radios	\$61.00	\$115,900,000	40.2
"Secondary" sets in above homes	16.00	72,800,000	25.3
Battery Portables	30.00	7,500,000	9.6
Auto-radios	100.00	80,000,000	7.0
Total sets in use, U.S.	61.00	\$115,900,000	9.6
Total homes in U.S.	24.00	\$21,600,000	7.5
Total homes with autos	40.00	\$8,000,000	16.7
Total Records	....	\$289,000,000	....

Nine Million Sets—

Sold for \$289,000,000

TOTALS ON
THE
5
TYPES
OF SETS

EDITOR: ORVILLE M. CALDWELL; PUBLISHER: M. CHAMBERLAIN; Managing Editor: DARRELL BARBER; Merchandise Editor: H. L. M. CARR; STAFF: N. McALPIN, G. H. MEYER, WILLIAM E. MOORE, M. H. NEWTON, E. A. NEUBAUER, R. V. SPINNETTA; SALES MANAGER: M. E. HERRING, R. J. FURZBACH, 391 N. Wabash St., Chicago, Ill.; CALDWELL-CLEMENTS, INC., 480 Lexington Ave., NEW YORK, N. Y.; Telephone PLaza 3-1340. Copyright 1940. Member Audit Bureau Circulations

JANUARY, 1940

1676

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[fol. 1677] PLAINTIFFS' DEPOSITION EXHIBIT 47

Radio Stations in the State of Florida which are Members of the NAB*

Station	Location	Owner and Operator
WRUF	Gainesville	State and University of Florida
WMBR	Jacksonville	Florida Broadcasting Company
WIOD	Miami	Isle of Dream Broadcasting Corp.
WQAM	Miami	Miami Broadcasting Corp. Inc.
WDBO	Orlando	Orlando Broadcasting Co. Inc.
WSUN	St. Petersburg	Chamber of Commerce of St. Petersburg
WFLA	St. Petersburg	Florida West Coast Broadcasting Co. Inc.

* Taken from Radio Advertising Rates and Data, January Issue 1940, pp. 59-63.

PLAINTIFFS' DEPOSITION EXHIBIT 43

[Vol. 1678]

This exhibit contains a list of approximately 585 copyrighted compositions, of which the words or music, or both, were written by Irving Berlin. Such compositions were copyrighted at various dates between 1909 and 1939. Specimen compositions, giving the collaborator, the publisher, the date of copyright, are the following:

Composition	Collaborator/s	Publisher	Copyright Date	Renewed	Remarks
Alexander's Ragtime Band		ABC Standard	3/18/11		
All Alone		Irving Berlin Inc.	9/9/24		
Always		Irving Berlin Inc.	9/17/25		
Araby		ABC Standard	7/29/15		
Because I Love You		Irving Berlin Inc.	9/30/26		
Blue Skies		Irving Berlin Inc.	1/15/27		
Call Me Up Some Rainy Afternoon		ABC Standard	4/23/10	4/30/37	ABC Music Corp.
Check to Check		Irving Berlin Inc.	7/2/35		Top Hat
Crimoline Days		Irving Berlin Inc.	11/3/22		Music Box Revue 1922-23
Cuddle Up		ABC Standard	11/24/11		A Real Girl
Easter Parade		Irving Berlin Inc.	9/22/33		As Thousands Cheer
Everybody's Doing It Now		ABC Standard	11/2/11		
Follow the Fleet		Irving Berlin Inc.	5/27/36		
For Your Country and My Country		ABC Standard Music	5/9/17		
He's a Devil in His Own Home Town	Grant Clarke	ABC Standard Music	3/14/14		
How Deep Is the Ocean, How High Is the Sky		Irving Berlin Inc.	9/27/32		
I Can't Do without You		Irving Berlin Inc.	3/21/28		
When I Lost You		ABC Standard Inc.	11/8/12		
God Bless America		Irving Berlin Inc.	2/20/39		

(Here follows 1 photolithograph, side folio 1679)

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Service Establishments, Places of Amusement, and Hotels: 1933

Table 53.—United States Summary—Analysis of Receipts, by Geographic Divisions and States, for—
(Receipts expressed in thousands of dollars)

Census of American Business				Places of Amusement			Hotels		
Division and State	Number of Establishments	Receipts	Admissions	Receipts from—			Receipts from—		
				Sale of Meals	Merchandise	Other Sources	Room Rentals	Sale of Meals	Other Sources
United States Total...	29,737	\$520,218	\$495,782	\$3,487	\$7,795	\$13,154	Total ..	29,462	\$515,549
Florida...	433	4,982	2,856	7	68	2,061	Florida...	382	10,884
									7,635
									2,521
									69
									659

[Col. 1081]

PLAINTIFFS' DEPOSITION EXHIBIT 49c

Service Establishments, Places of Amusement, and Hotels: 1933

Table 54.—United States Summary—Analysis of Receipts, by Geographic Divisions and States
(Receipts expressed in thousands of dollars)

Census of American Business				Receipts from—			Receipts from—		
Division and State	Number of Establishments	Receipts	Admissions	Service	Room Rentals	Other Sources	Sale of Merchandise	Sale of Meals	Other Sources
				\$1,680,717	\$309,497	\$155,423	\$61,601	\$67,861	\$67,861
United States Total.....	502,416	\$2,700,881	\$495,782	\$1,680,717	\$309,497	\$155,423	\$61,601	\$67,861	\$67,861
Florida.....	6,370	31,215	2,856	14,872	7,783	2,543	360	2,702	2,702

¹ American plan and mixed plan (American and European) hotels were not always able to show meal sales separately. Room rentals are therefore overstated, and sales of meals understated to some extent.

[fol. 1682]

PLAINTIFF'S DEPOSITION EXHIBIT 50-A

Release by the Federal Communications Commission showing that 10 stations in Florida in the year 1937 with net sales of \$25,000 or more, had

Network Time Sales of	\$332,535	
Local Time Sales of	427,676	
National Spot Sales of	340,128	
Total Time Sales of		\$1,100,339
Talent and Misc. Sales		20,012
Total Gross Sales		\$1,120,351
Less Agency Commissions		33,962
Net Sales		\$1,086,389

It further shows that there were 15 commercial stations in Florida during that year with

Net Sales of	\$1,141,724	
With total expenses of	947,909	
Leaving a net broadcasting revenue of		\$193,815

Plaintiffs' Deposition Exhibits 50 B & C—omitted.

(Here follows Exhibit 50-D)

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PLAINTIFFS' DEPOSITION EXHIBIT 50-D

Table 39

Federal Communications Commission

Accounting Department

Summary of responses from broadcast stations to program questionnaire
Types of programs broadcast for the week beginning March 6, 1938
by

Class of Station and Time Designation

Type of program (Col. 1)	Clear Channel								Regional						Local				Grand Total Hours (Col. 13)		Total Minutes (Col. 14)					
	50,000 Watts or More				5,000 to 25,000 Watts				Unlimited		Other		Limited & Day		Part-time		Unlimited						Day		Part-time	
	Hours (Col. 2)	Minutes (Col. 3)	Hours (Col. 4)	Minutes (Col. 5)	Hours (Col. 6)	Minutes (Col. 7)	Hours (Col. 8)	Minutes (Col. 9)	Hours (Col. 10)	Minutes (Col. 11)	Hours (Col. 12)	Minutes (Col. 13)	Hours (Col. 14)	Minutes (Col. 15)	Hours (Col. 16)	Minutes (Col. 17)	Hours (Col. 18)	Minutes (Col. 19)								
No. of stations	29	4	8	10	8	182	62	36	180	33	46	598														
I. Commercial:																										
Music.....	401	6	37	15	95	48	109	48	64	23	2,453	23	906	39	466	33	2,331	29	338	3	539	7	7,743	32		
Dramatic.....	765	49	41	49	118	18	67	36	130	28	1,963	17	113	28	106	40	384	35	23	55	54	18	3,772	13		
Variety.....	316	58	30	54	77	45	41	39	75	11	1,330	43	126	40	180	34	559	52	42	56	85	8	2,868	7		
Talks and Dialogues.....	257	30	16	53	48	28	30	39	54	46	987	52	198	6	91	45	362	55	62	15	83	51	2,400	57		
News.....	148	19	2	44	27	16	27	4	36	..	973	9	144	30	60	21	391	30	61	18	87	23	1,989	34		
Religious & Devotional.....	24	6	3	45	16	15	44	39	8	31	394	4	156	47	65	37	423	47	39	58	72	18	1,249	47		
Special Events.....	7	13	.....	.....	.....	53	7	39	2	5	180	21	18	51	26	28	188	17	13	10	32	47	477	44
Miscellaneous.....	33	5	1	48	8	56	21	14	12	39	351	59	98	59	72	29	325	51	44	47	68	49	1,040	26		
Total I.....	1,954	6	135	8	393	39	356	..	384	3	8,464	48	1,764	..	1,072	27	5,368	15	626	22	1,023	41	21,542	30		
II. Sustaining:																										
Music.....	1,037	55	59	44	358	35	337	39	365	51	8,400	5	2,172	53	1,037	46	8,816	20	1,259	15	1,116	11	24,962	34		
Dramatic.....	81	38	4	15	18	26	30	22	23	32	648	51	154	9	90	38	472	47	93	2	86	51	1,910	31		
Variety.....	117	11	15	58	35	32	80	37	40	..	983	24	166	5	144	12	864	11	80	49	133	51	2,641	50		
Talks and Dialogues.....	256	13	18	6	77	24	92	29	84	29	1,678	51	542	21	297	54	1,324	24	146	42	193	41	4,713	4		
News.....	124	45	15	33	31	44	58	29	40	41	1,024	20	429	55	179	40	1,124	32	143	32	165	26	3,338	47		
Religious & Devotional.....	77	11	6	..	31	8	18	18	29	14	538	23	237	48	135	21	628	49	110	40	120	59	1,963	51		
Special Events.....	24	15	3	34	16	39	17	24	23	42	306	2	74	33	53	20	294	24	35	30	49	34	898	57		
Miscellaneous.....	10	59	.....	23	4	25	5	16	6	43	107	7	45	37	19	5	126	12	19	29	35	16	380	32	
Total II.....	1,730	7	123	33	573	53	627	34	614	12	13,687	3	3,823	21	1,957	56	13,831	39	1,888	59	1,901	49	40,810	6		
III. Total:																										
Music.....	1,439	1	96	59	454	23	447	45	430	14	10,853	28	3,079	32	1,504	19	11,147	49	1,597	18	1,655	18	32,708	6		
Dramatic.....	847	27	46	4	136	44	108	58	154	..	2,612	8	267	37	199	18	1,057	22	116	57	141	9	5,682	44		
Variety.....	434	9	46	52	113	17	102	8	115	11	2,314	7	292	45	324	46	1,424	3	123	45	218	59	5,509	57		
Talks and Dialogues.....	513	43	34	59	125	52	129	35	139	15	2,666	43	740	27	389	39	1,687	19	208	57	277	32	7,114	1		
News.....	273	4	18	17	59	..	83	43	76	41	1,827	29	574	25	340	1	1,716	2	204	50	252	49	5,328	21		
Religious & Devotional.....	101	17	9	45	47	23	62	57	37	45	932	27	394	35	200	58	1,082	36	150	38	193	17	3,213	38		
Special Events.....	31	28	3	34	17	32	25	3	25	47	486	23	93	24	79	48	482	41	48	40	83	31	1,376	41		
Miscellaneous.....	44	4	2	11	13	21	36	30	19	22	459	6	144	36	91	34	452	3	64	16	104	5	1,421	8		
Total III.....	3,684	13	258	41	967	32	983	34	998	15	22,151	51	5,587	21	3,030	23	19,349	55	2,515	21	2,925	30	62,352	36		

Note: Of the 629 responses accounted for in these tables 4 cover 2 stations each. Thus the table actually embraces data for 633 stations.

PLAINTIFFS' DEPOSITION EXHIBIT 50E—OMITTED

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PLANNERS' DEPARTMENT EXHIBIT 61
Radio Station Rates in the State of Florida*
Figures given are for 1 hr., 1/2 hr., and 3/4 hr.

Station	Location	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939
WFLA	Clearwater	\$50.00	75.00	100.00	100.00	100.00	100.00	120.00	120.00	120.00	120.00	120.00
		25.00	40.00	65.00	60.00	60.00	60.00	60.00	72.00	72.00	72.00	72.00
			25.00	35.00	35.00	35.00	35.00	35.00	40.00	40.00	40.00	40.00
WRUF**	Gainesville		75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00
			50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00
			30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00
WJAX**	Jacksonville		225.00	225.00	225.00	225.00	225.00	190.00	190.00	190.00	190.00	190.00
			135.00	135.00	135.00	135.00	135.00	120.00	120.00	120.00	120.00	120.00
			75.00	75.00	75.00	75.00	75.00	74.00	74.00	74.00	74.00	74.00
WMBL**	Lakeland		5.00									
			13.50									
			8.50									
WQAM	Miami	75.00	75.00	85.00	110.00	100.00	100.00	100.00		140.00	150.00	150.00
		40.00	40.00	45.00	65.00	60.00	60.00	60.00	75.00	75.00	90.00	90.00
		22.50	22.50	25.00	40.00	36.00	36.00	36.00	50.00	50.00	60.00	60.00
WIOD**	Miami		75.00	100.00	100.00	100.00	100.00			140.00	150.00	150.00
			45.00	60.00	60.00	60.00	60.00	75.00	75.00	84.00	90.00	90.00
			25.00	36.00	35.00	35.00	35.00	50.00	50.00	36.00	60.00	60.00
WMBF***	Miami Beach											
WDBO	Orlando	52.00	52.00	75.00	75.00	75.00	75.00	75.00	100.00		100.00	100.00
		30.55	30.55	40.00	40.00	40.00	40.00	40.00	60.00	60.00	60.00	60.00
		16.25	16.25	25.00	25.00	25.00	25.00	25.00	35.00	35.00	35.00	35.00
WCOA	Pensacola	100.00	75.00	70.00	70.00	50.00	50.00	50.00	75.00	75.00	75.00	75.00
		80.00	60.00	40.00	45.00	32.50	32.50	32.50	40.00	40.00	40.00	40.00
		50.00	40.00	25.00	30.00	20.00	20.00	20.00	25.00	25.00	25.00	25.00

PLAINTIFFS' DISPOSITION EXHIBIT 51—Continued

Station	Location	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939
WSUN**	St. Petersburg	75.00	75.00	100.00	100.00	100.00	100.00	100.00	120.00	120.00	120.00	120.00
		40.00	40.00	60.00	60.00	60.00	60.00	60.00	72.00	72.00	72.00	72.00
		25.00	25.00	35.00	35.00	35.00	35.00	35.00	40.00	40.00	40.00	40.00
WSIB***	Sarasota											
WDAE	Tampa	75.00	75.00	80.00	100.00	100.00			110.00	100.00	100.00	100.00
		40.00	40.00	50.00	60.00	60.00	60.00	60.00	60.00	65.00	65.00	65.00
		25.00	25.00	30.00	35.00	35.00	35.00	35.00	35.00	37.50	37.50	37.50
WMBR	Tampa-Jacksonville	20.00	45.00	75.00	75.00	75.00	75.00			125.00	125.00	125.00
		12.50	25.00	40.00	40.00	40.00	40.00	60.00	60.00	75.00	75.00	75.00
		15.00	25.00	25.00	25.00	25.00	25.00	35.00	35.00	50.00	50.00	50.00
WMFJ	Daytona Beach										75.00	75.00
									45.00	45.00	45.00	45.00
									30.00	30.00	30.00	30.00
WTAL	Tallahassee								58.00	58.00	58.00	58.00
									30.00	30.00	30.00	30.00
									17.50	17.50	17.50	17.50
WLAK	Lakeland									50.00	50.00	40.00
										30.00	30.00	25.00
										17.50	17.50	14.00
WFOY	St. Augustine										35.00	50.00
											20.00	30.00
											12.00	30.00
WJNO	West Palm Beach									70.00	70.00	70.00
										42.00	42.00	42.00
										26.00	26.00	26.00
WKAT	Miami Beach											120.00
												96.00
												72.00

* Taken from March, 1939, and January 1940-1949 issues of Radio Advertising Rates & Data.
 ** Date incomplete for some years.

[fol. 1684] PLAINTIFFS' DEPOSITION EXHIBIT 52

P. 59 of Federal Census of Business for Broadcasting for 1935 showing that 557 stations in the United States had a total net revenue from sale of time of \$53,325,000, of which \$26,321,000 was from national and regional network and spot sales, and \$26,004,000 was from local stations.

The same exhibit also shows that in the State of Florida that year 10 stations had a total net revenue from sale of time of \$580,000, of which \$275,000 was from national and regional network and spot sales, and \$305,000 was from local stations.

[fol. 1685] PLAINTIFFS' DEPOSITION EXHIBIT 53

Places of Amusement: 1935

Table 1.—Establishments and Receipts by Kinds of of Business for State of Florida

Kind of Business	Number of establishments	Receipts (add 000)
Amusement devices.....	5	33
Baseball and football clubs, sports and athletic fields and sports promoters.....	7	95
Bathing beaches (not including municipal).....	17	70
Dance halls, studios, and academies.....	34	113
Horse and dog race tracks.....	8	3,827
Skating rinks.....	5	8
Swimming pools (not including municipal).....	15	49
Theaters, motion picture (including motion picture theaters with vaudeville).....	167	5,791
Other amusements.....	125	916

0

[fol. 1686] PLAINTIFFS' DEPOSITION EXHIBIT 54

Excerpt from United States Census of Business for hotels for 1935 showing that 1,173 hotels in Florida had receipts for that year of \$21,761,000.

[fol. 1687]

PLAINTIFFS' DEPOSITION EXHIBIT 55

This shows the annual income of each of the three broadcasting chains, National Broadcasting Company, Columbia Broadcasting System and Mutual Broadcasting System* from the years 1930 to 1939, as follows:

Year	NBC	CBS	MBS	Total
1930.....	\$20,184,914	\$8,720,349	.....	\$28,905,263
1931.....	25,370,398	10,893,590	.....	36,063,988
1932.....	26,504,891	12,602,412	.....	39,107,303
1933.....	21,452,732	10,063,566	.....	31,516,298
1934.....	27,833,616	14,825,895	.....	42,659,511
1935.....	31,148,931	17,637,804	\$1,293,103	50,079,838
1936.....	34,523,950	23,168,148	1,987,573	59,679,671
1937.....	38,651,286	28,722,118	1,936,102	69,309,506
1938.....	41,462,879	27,345,397	2,920,323	71,728,599
1939.....	45,244,354	34,539,665	3,329,782	83,113,801

* Mutual Broadcasting System was organized in 1935.

PLAINTIFFS' DEPOSITION EXHIBIT 56—Omitted

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NATIONAL BROADCASTING CO., Inc. NETWORK RATES

1900 Broadway, New York City
Telephone CH 1-1000

NBC-RED NETWORK RATES

(Rates in Effect Jan. 1, 1940)

BASIC RED NETWORK

City and Call Letter	1 Hr.	1/2 Hr.	30 Sec.
New York (WJZ)	\$1,400	\$700	\$350
Boston (WJZ)	1,200	600	300
Philadelphia (WJZ)	1,100	550	275
Pittsburgh (WJZ)	1,000	500	250
Washington (WJZ)	900	450	225
Chicago (WJZ)	800	400	200
St. Louis (WJZ)	700	350	175
San Francisco (WJZ)	600	300	150
Portland, Ore. (WJZ)	500	250	125
Seattle (WJZ)	400	200	100
Spokane (WJZ)	300	150	75
Portland, Me. (WJZ)	200	100	50
Albany (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25

BASIC RED SUPPLEMENTARIES

City and Call Letter	1 Hr.	1/2 Hr.	30 Sec.
Richmond (WJZ)	\$1,400	\$700	\$350
New York (WJZ)	1,200	600	300
Philadelphia (WJZ)	1,100	550	275
Pittsburgh (WJZ)	1,000	500	250
Washington (WJZ)	900	450	225
Chicago (WJZ)	800	400	200
St. Louis (WJZ)	700	350	175
San Francisco (WJZ)	600	300	150
Portland, Ore. (WJZ)	500	250	125
Seattle (WJZ)	400	200	100
Spokane (WJZ)	300	150	75
Portland, Me. (WJZ)	200	100	50
Albany (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25

BASIC RED SUPPLEMENTARIES

City and Call Letter	1 Hr.	1/2 Hr.	30 Sec.
Richmond (WJZ)	\$1,400	\$700	\$350
New York (WJZ)	1,200	600	300
Philadelphia (WJZ)	1,100	550	275
Pittsburgh (WJZ)	1,000	500	250
Washington (WJZ)	900	450	225
Chicago (WJZ)	800	400	200
St. Louis (WJZ)	700	350	175
San Francisco (WJZ)	600	300	150
Portland, Ore. (WJZ)	500	250	125
Seattle (WJZ)	400	200	100
Spokane (WJZ)	300	150	75
Portland, Me. (WJZ)	200	100	50
Albany (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25

RED SOUTH-CENTRAL GROUP, CST

City and Call Letter	1 Hr.	1/2 Hr.	30 Sec.
Memphis (WJZ)	\$1,400	\$700	\$350
Atlanta (WJZ)	1,200	600	300
Birmingham (WJZ)	1,100	550	275
Jackson (WJZ)	1,000	500	250
New Orleans (WJZ)	900	450	225
San Antonio (WJZ)	800	400	200
Fort Worth (WJZ)	700	350	175
Dallas (WJZ)	600	300	150
San Antonio (WJZ)	500	250	125
Fort Worth (WJZ)	400	200	100
Dallas (WJZ)	300	150	75
San Antonio (WJZ)	200	100	50
Fort Worth (WJZ)	100	50	25
Dallas (WJZ)	100	50	25
San Antonio (WJZ)	100	50	25
Fort Worth (WJZ)	100	50	25
Dallas (WJZ)	100	50	25
San Antonio (WJZ)	100	50	25
Fort Worth (WJZ)	100	50	25
Dallas (WJZ)	100	50	25

RED SOUTHWESTERN GROUP, CST

City and Call Letter	1 Hr.	1/2 Hr.	30 Sec.
Phoenix (WJZ)	\$1,400	\$700	\$350
San Francisco (WJZ)	1,200	600	300
Los Angeles (WJZ)	1,100	550	275
San Diego (WJZ)	1,000	500	250
San Jose (WJZ)	900	450	225
San Francisco (WJZ)	800	400	200
San Jose (WJZ)	700	350	175
San Francisco (WJZ)	600	300	150
San Jose (WJZ)	500	250	125
San Francisco (WJZ)	400	200	100
San Jose (WJZ)	300	150	75
San Francisco (WJZ)	200	100	50
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25

RED MOUNTAIN GROUP, MST

City and Call Letter	1 Hr.	1/2 Hr.	30 Sec.
Denver (WJZ)	\$1,400	\$700	\$350
San Francisco (WJZ)	1,200	600	300
Los Angeles (WJZ)	1,100	550	275
San Diego (WJZ)	1,000	500	250
San Jose (WJZ)	900	450	225
San Francisco (WJZ)	800	400	200
San Jose (WJZ)	700	350	175
San Francisco (WJZ)	600	300	150
San Jose (WJZ)	500	250	125
San Francisco (WJZ)	400	200	100
San Jose (WJZ)	300	150	75
San Francisco (WJZ)	200	100	50
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25

PACIFIC COAST RED NETWORK, PST

City and Call Letter	1 Hr.	1/2 Hr.	30 Sec.
San Francisco (WJZ)	\$1,400	\$700	\$350
Los Angeles (WJZ)	1,200	600	300
San Diego (WJZ)	1,100	550	275
San Jose (WJZ)	1,000	500	250
San Francisco (WJZ)	900	450	225
San Jose (WJZ)	800	400	200
San Francisco (WJZ)	700	350	175
San Jose (WJZ)	600	300	150
San Francisco (WJZ)	500	250	125
San Jose (WJZ)	400	200	100
San Francisco (WJZ)	300	150	75
San Jose (WJZ)	200	100	50
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25

PACIFIC COAST BLUE NETWORK, PST

City and Call Letter	1 Hr.	1/2 Hr.	30 Sec.
San Francisco (WJZ)	\$1,400	\$700	\$350
Los Angeles (WJZ)	1,200	600	300
San Diego (WJZ)	1,100	550	275
San Jose (WJZ)	1,000	500	250
San Francisco (WJZ)	900	450	225
San Jose (WJZ)	800	400	200
San Francisco (WJZ)	700	350	175
San Jose (WJZ)	600	300	150
San Francisco (WJZ)	500	250	125
San Jose (WJZ)	400	200	100
San Francisco (WJZ)	300	150	75
San Jose (WJZ)	200	100	50
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25
San Jose (WJZ)	100	50	25
San Francisco (WJZ)	100	50	25

NBC-BLUE NETWORK RATES

(Rates in Effect Jan. 1, 1940)

BASIC BLUE NETWORK

City and Call Letter	1 Hr.	1/2 Hr.	30 Sec.
New York (WJZ)	\$1,400	\$700	\$350
Boston (WJZ)	1,200	600	300
Philadelphia (WJZ)	1,100	550	275
Pittsburgh (WJZ)	1,000	500	250
Washington (WJZ)	900	450	225
Chicago (WJZ)	800	400	200
St. Louis (WJZ)	700	350	175
San Francisco (WJZ)	600	300	150
Portland, Ore. (WJZ)	500	250	125
Seattle (WJZ)	400	200	100
Spokane (WJZ)	300	150	75
Portland, Me. (WJZ)	200	100	50
Albany (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25

BASIC BLUE SUPPLEMENTARIES

City and Call Letter	1 Hr.	1/2 Hr.	30 Sec.
Richmond (WJZ)	\$1,400	\$700	\$350
New York (WJZ)	1,200	600	300
Philadelphia (WJZ)	1,100	550	275
Pittsburgh (WJZ)	1,000	500	250
Washington (WJZ)	900	450	225
Chicago (WJZ)	800	400	200
St. Louis (WJZ)	700	350	175
San Francisco (WJZ)	600	300	150
Portland, Ore. (WJZ)	500	250	125
Seattle (WJZ)	400	200	100
Spokane (WJZ)	300	150	75
Portland, Me. (WJZ)	200	100	50
Albany (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25
Albany, N. Y. (WJZ)	100	50	25

MIDWESTERN NETWORK

City and Call Letter	1 Hr.	1/2 Hr.	30 Sec.
Chicago (WJZ)	\$1,400	\$700	\$350
St. Louis (WJZ)	1,200	600	300
Indianapolis (WJZ)	1,100	550	275
Des Moines (WJZ)	1,000	500	250
Omaha (WJZ)	900	450	225
Chicago (WJZ)	800	400	200
St. Louis (WJZ)	700	350	175
Indianapolis (WJZ)	600	300	150
Des Moines (WJZ)	500	250	125
Omaha (WJZ)	400	200	100
Chicago (WJZ)	300	150	75
St. Louis (WJZ)	200	100	50
Indianapolis (WJZ)	100	50	25
Des Moines (WJZ)	100	50	25
Omaha (WJZ)	100	50	25
Chicago (WJZ)	100	50	25
St. Louis (WJZ)	100	50	25
Indianapolis (WJZ)	100	50	25
Des Moines (WJZ)	100	50	25
Omaha (WJZ)	100	50	25
Chicago (WJZ)	100	50	25

BLUE SOUTHERN GROUP, CST

Baton Rouge (WZBO).....	\$60	48	
Total for Group.....	\$180	\$408	\$816
9 BLUE SOUTHWESTERN GROUP, CRT			
Individually available:			
Oklahoma City (KTOK).....	\$120	\$72	\$408
Port Worth-Dallas			
(KQEO).....	240	144	576
Houston (KXKY).....	240	120	480
Birmingham (KFDM).....	150	72	360
Total for Group.....	\$450	\$408	\$1,632
BLUE MOUNTAIN GROUP, MFT			

INDIVIDUAL SUPPLEMENTARIES, CBT

Individually available. For use with Red Southcentral or Blue Southern.

City and Call Letter	Time*	1 Hr.	1/2 Hr.	1/4 Hr.
Mobile (WALA)		\$120	\$72	\$48
Pensacola (WCOA)		100	60	40
Knoxville (WROL)		100	60	40
Chattanooga (WAPO)		100	60	40

Individually available. For use with Red or Blue Southwestern Groups.

Pittsburg, Kan. (KOAM)	\$120	\$72	\$48
Springfield, Mo. (KGBX)	120	72	48
Corpus Christi (KRIR)	100	60	40
Weslaco (KRGV)	100	60	40

NORTH MOUNTAIN GROUP, MST

Individually available. For use with Red or Blue Mountain or Coast Groups.

Boise (KIDO)	\$120	\$72	\$48
Butte (KGIR)	120	72	48
Helena (KPPA)			

(No charge. Available only when KGIR is used.)

Billings (KGHL)	120	72	48
Pocatello, Idaho (KRFI)			
Twin Falls, Idaho (KTFF)			

(No charge. Available only when complete Group is used.)

Total for Group	\$360	\$216	\$144
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SOUTH MOUNTAIN GROUP, MST

Individually available. For use with either Red or Blue Basic or Mountain Groups.

Pueblo (KGHP)	\$120	\$72	\$48
Albuquerque KOB	120	72	48
El Paso (KTSM)	120	72	48

Total for Group	\$360	\$216	\$144
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ADDITIONAL TO PACIFIC NETWORKS

Individually available with Pacific Coast Red or Blue Network.

Phoenix (KTAR)	M	\$160	\$96	\$64
Tucson (KVOA)	M			
(No charge. Available only when KTAR is used.)				
Reno (KOH)	P	80	48	32
Medford (KMED)	P	80	48	32

CANADIAN SERVICE, EST

Individually available. For use with Basic Red Network.				
Toronto (CBL).....	-DS	\$300	\$180	\$120
Montreal (CBM).....	-DS	240	144	96

Supplementary

Montreal (CBF)	DS	\$300	\$180	\$120
(French Language Station)				
(CBF-CBMT) Combination rate		325	195	130

Individually available. For use with Basic Blue Network. Special Blue discount on CFCF only.

Toronto (CBL)	DS	\$300	\$180	\$120
Montreal (CFCF)	DS	240	144	96

Montreal (CBF)	DS	300	180	120
(French Language Station)				
(CBF-CFCF) Combination rate		325	195	130

NOTE: Rates for Canadian Broadcasting Corporation application.

SPECIAL SERVICE

HAWAIIAN, HST

For use with Pacific and Blue Networks.

Honolulu (KGU)	\$160	\$96	\$64
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(Three rates apply for all periods, day and night.)

CUBAN, EST

For use with Basic and Blue.

Havana (CMX)	\$200	\$120	\$80
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(Three rates apply for all periods, day and night.)

GENERAL SERVICE DATA

CLASSIFICATIONS

(All rates quoted apply to Honolulu and Havana.)

a. 6:00 p.m. to 10 p.m., Gross Rates as listed on this card.

b. 12:00 Noon to 6:00 p.m., Sundays only, Three-quarters Gross Rates.

c. 11:00 p.m. to 12:00 a.m. (exclusive of Sunday), One-half Gross Rates.

d. 12:00 Midnight to 6:00 a.m., One-third Gross Rates.

Service available only if a regularly scheduled program precedes or follows.

e. Rates for portion to correspond to longer than one hour in part program one-hour rate.

CONTRACTS, RATES AND DISCOUNTS

a. Weekly Gross network broadcast. All network contracts combined for determine rate of discount.

Contracted Value of Network Time at Gross Rate. On Blue Network special Blue Discount is paid on the Net discounts.

Less than \$2,000 per week	None
\$2,000 or more but less than \$4,000 per week	2 1/2%
\$4,000 or more but less than \$8,000 per week	5%
\$8,000 or more but less than \$12,000 per week	7 1/2%
\$12,000 or more but less than \$16,000 per week	10%
\$16,000 or more per week	12 1/2%

Network Programs Between 8:00 and 10:00 p.m. New York Time

On the Basic Red Network and its supplementary facilities used on such programs and on their rebroadcasts, weekly rate of discounts will be reduced 5% (for example—12 1/2% becomes 7 1/2%). Where Red Network supplementary facilities are used with the Blue Network the 5% reduction on the rate of discount will apply to the Red facilities only.

b. Annual rebate for 52 consecutive weeks network broadcasting.

Rebate to be 12 1/2% of the gross billing on all facilities used during the contract year, except on such facilities as are discontinued prior to the end of the contract year. On Blue Network contracts receiving special Blue Discounts this 12 1/2% rebate is paid on the net rate after the special discount. The rebate will be due and payable at the end of each 52 weeks of consecutive service or currently on firm 52-week contracts. Interruptions of the series necessitated by the broadcasting of special events of importance will not affect the advertiser's right to the rebate.

c. Gross billing after deductions of percentage discounts, if any, shall be subject to an advertising agency commission of 15%. From the annual rebate, if any, the company shall deduct the excess agency commission previously allowed. Commissions allowed only to recognized advertising agencies.

d. No commission on program charges.

e. No cash discounts—Bills due and payable when rendered.

TERMS OF USE

a. Minimum period sold is 15 minutes. No periods are sold in bulk for re-sale. Advertisers cooperating in group broadcasts are required to make individual contracts with the National Broadcasting Company, subject to card rate and regulations.

b. All programs are subject to program policies and approval of the National Broadcasting Company.

c. The closing date is three weeks in advance of initial program.

Rates quoted herein subject to change without notice. This Rate Card is for informative purposes, and does not constitute an offer on the part of the National Broadcasting Company.

PRODUCTION SERVICES

a. Services of the NBC Artists Service and Program Department in arranging and representing programs are included without extra charge.

b. No special charge is made for facilities when programs originate in NBC Studios in New York City, Chicago, Washington, San Francisco and Los Angeles (Hollywood) provided the City in which the program originates is included in the Network facilities ordered. Special charge, subject to agency commission but not to discount or rebate, made for facilities when program origination does not conform to these conditions—and for programs requiring special production.

REPRESENTATIVES

RCA Bldg., New York, N. Y.
Hotel Bradford (WBZ), Boston, Mass.
Grant Bldg. (KDKA), Pittsburgh, Pa.
Trans-Lux Bldg. (WRC-WMAL), Washington, D. C.
Hotel Kimball (WBZ), Springfield, Mass.
815 Superior Ave. N.E. (WTAM), Cleveland, Ohio
Merchandise Mart (WMAQ-WENR), Chicago, Ill.
1619 Walnut St. (KYW), Philadelphia, Pa.
802 Fisher Building, Detroit, Mich.
111 Sutter St., San Francisco, Calif.
1 River Rd., (WGY), Schenectady, N. Y.
1625 California St. (KOA), Denver, Colo.
Sunset Blvd. & Vine St., Hollywood, Calif.

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[fol. 1694] PLAINTIFFS' DEPOSITION EXHIBIT 61

Shows the group ownership of broadcasting stations in the United States and includes among others the following (being from pp. 198 to 199 of the 1940 Yearbook of Broadcasting Magazine).

Columbia Broadcasting System Group—WABC, New York; WBBM, Chicago; WJSV, Washington; WKRC, Cincinnati; WBT, Charlotte; WCCO, Minneapolis; KMOX, St. Louis; KNX, Hollywood; WEEI, Boston (leased from Boston Edison Co.). Isaac D. Levy and Dr. Leon Levy, directors of CBS, are also chief owners of WCAU, Philadelphia, in which William S. Paley, CBS president, Samuel Paley and Jacob Paley, also CBS directors, are minority stockholders.

James M. Cox Group—WHIO, Dayton, O.; WIOD, Miami, Fla.; WSB, Atlanta; WAGA, Atlanta.

K. G. Marshall-Glenn Marshall Group—WBRC, Birmingham; WMBR, Jacksonville, Fla. (31%).

National Broadcasting Co. Group—WEAF, New York; WJZ, New York; WRC, Washington; WMAQ, Chicago, WENR, Chicago; WTAM, Cleveland; KPO, San Francisco. Leases from owners; WMAL, Washington. Operates and manages for General Electric Co.; WGY, Schenectady; KOA, Denver; KGO, San Francisco. Operates and manages for Westinghouse Co.; KDKA, Pittsburgh; WBZ, Boston; WBZA, Springfield, Mass.; KYW, Philadelphia. (Owns but leases to Fishers Blend Station Inc., KJR, Seattle.)

Ed Norton-Thad Holt Group—WAPI, Birmingham (lease); WMBR, Jacksonville, Fla.

John H. Perry Newspapers Group—WCOA, Pensacola; WJHP, Jacksonville, Fla.

S. H. Campbell Holdings—WSPB, Sarasota, Fla. (33 1/3%); WJHL, Johnson City, Tenn. (20%).

[fol. 1695] PLAINTIFFS' DEPOSITION EXHIBITS 62 AND 63
OMITTED

[fol. 1696] PLAINTIFFS' DEPOSITION EXHIBIT 64

This is p. 74 of the 1940 Yearbook of Broadcasting Magazine and contains a list of new broadcast stations author-

ized by the FCC during 1939, among them being the following stations in the State of Florida:

WFTL, Fort Lauderdale—Licensed to Tom M. Bryan, contracting and real estate. Granted July 13; 100 watts night and 250 day on 1370 kc.

WFTM, Fort Myers—CP issued to Fort Myers Broadcasting Co.; W. E. Bennis Jr., president; Mrs. W. E. Bennis, vice-president and treasurer; B. Julian Skinner, director. Granted Oct. 3; 250 watts on 1210 kc.

WTMC, Ocala—Licensed to John T. Alsop, Jr., former mayor of Jacksonville, motion pictures and real estate. Granted March 13; 100 watts on 1500 kc.

WDLF, Panama City—CP issued to Panama City Broadcasting Co.; Phillip A. Roll, attorney, president, 33 1/3% stockholders; E. D. DeWitt, retired newspaper broker, vice-president, 33 1/3%; W. J. Cook, Ford dealer and bank vice-president, secretary treasurer, 33 1/3%. Granted June 27; 100 watts night and 250 day on 1200 kc.

WSPB, Sarasota—Licensed to WSPB Inc.; 32% of stock each owned by S. H. Campbell Jr., Chattanooga oil distributor, president; R. C. Jones Jr., Chattanooga merchant; S. C. Hutcheson, Chattanooga miller; C. L. Babcock, Punta Gorda, Fla., retired, vice-president, 2%; Clyde H. Wilson, Sarasota, Fla., attorney, secretary, 2%. Granted July 13; 100 watts night and 250 day on 1420 kc.

WTSP, St. Petersburg—Licensed to Pinellas Broadcasting Co.; Sam H. Mann Jr., attorney, president, 48 shares; McKinney Barton, attorney, vice-president, 1 share; James R. Bussey, attorney, secretary-treasurer, 1 share. Granted April 3; 250 watts on 1370 kc. (Sale to Nelson Poynter, publisher of St. Petersburg Times, pends FCC approval.)

[fol. 1697] PLAINTIFFS' DEPOSITION EXHIBIT 65

This is p. 76 of the 1939 Yearbook of Broadcasting Magazine showing that there was authorized by the FCC in the year 1938 new stations, among them being the following stations in the State of Florida:

WJHP, Jacksonville—CP issued to The Metropolis Co., owned by John H. Perry, publisher of the Jacksonville Journal, Pensacola Journal and News and owner of WCOA, Pensacola; 250 watts on 1290 kc.

(Here follow 4 photolithographs, side folios 1698-1701.)

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National Association of Broadcasters: 1939-40 Officers and Committees

Headquarters Office: 1426 K St. N. W., Washington, D. C. Phone: National 2080

Board of Directors

- Paul W. Moroney, WTIC, Hartford, Conn. (District 1: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island)
- Harry C. Wilder, WSYR, Syracuse, N. Y. (District 2: New York)
- Clifford M. Chafey, WHEU-WRAW, Reading, Pa. (District 3: Delaware, New Jersey, Pennsylvania)
- John A. Kennedy, WCHS, Charleston, W. Va. (District 4: E. C. Maryland, North Carolina, South Carolina, Virginia, West Virginia)
- W. Walter Tice, WFLA, Tampa, Fla. (District 5: Alabama, Florida, Georgia, Puerto Rico)
- Edwin W. Craig, WEM, Nashville (District 6: Arkansas, Louisiana, Mississippi, Tennessee)
- J. H. Ryan, WSPD, Toledo, O. (District 7: Kentucky, Ohio)
- John F. Peters, WKZO, Kalamazoo, Mich. (District 8: Indiana, Michigan)
- William H. West, WTMV, E. St. Louis, Ill. (District 9: Illinois, Wisconsin)
- John J. Gillin, Jr., WOW, Omaha (District 10: Iowa, Missouri, Nebraska)
- Earl H. Gammons, WCCO, Minneapolis (District 11: Minnesota, North Dakota, South Dakota)
- Herbert Hollister, KANS, Wichita, Kan. (District 12: Kansas, Oklahoma)
- O. L. Taylor, KGNC, Amarillo, Tex. (District 13: Texas)
- Eugene O'Fallon, KFEL, Denver (District 14: Colorado, Idaho, Utah, Wyoming, Montana)
- Howard Lane, KFBE, Sacramento, Cal. (District 15: California, including San Luis Obispo, Kern, Los Angeles, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego and Imperial counties; Nevada, Arizona)
- Donald W. Thornburgh, KNX, Hollywood (District 16: Arizona, New Mexico, California, including Los Angeles, District 15)

Directors at Large

- Harold Hough, WBAP, Fort Worth
- Frank M. Russell, WHC-NH, Washington

Medium Stations

- George Norton Jr., WAVE, Louisville, Ky.
- Ivan S. Elias, WWNC, Asheville, N. C.

Small Stations

- John Elmer, WCBM, Baltimore, Md.
- Harry R. Spence, KXRO, Aberdeen, Wash.

*Term expires in 1940.

Presidents of NAB

- Eugene F. McDonald Jr. (WJAZ) 1923-1925
- Frank W. Elliot (WBO) 1925-1928
- Earle C. Anthony (KFI) 1928-1929
- William S. Hedges (WMAQ) 1929-1930
- Walter Damm (WTMJ) 1930-1931
- Harry Shaw (WMT) 1931-1932
- Truman Ward (WLAG) 1932-1933
- Alfred J. McCosher (WOR) 1933-1935
- Leo Fitzpatrick (WJB) 1935-1936
- Charles W. Myers (KOIN) 1936-1937
- John Elmer (WCBM) 6-23-37-2-16-38
- Mark Ethridge (WHAS) 3-30-38-7-1-38
- Neville Miller 1938-

* Deceased.

HEADQUARTERS STAFF

- Neville Miller, President
- Edwin M. Spence, Secretary-Treasurer
- Russell P. Place, General Counsel
- Paul F. Peter, Director of Research
- Edward M. Kirby, Director of Public Relations and Education
- Joseph L. Miller, Director of Labor Relations
- Lynne C. Riebel, Director of Engineering
- Andrew W. Bennett, Special Copyright Counsel
- R. J. Henry, Jr., Bureau of Radio Advertisements
- Arthur Bringer, Promotions
- I. Robert Myers, Research Assistant
- Everett Revercomb, Auditor

BROADCAST MUSIC, INC.

(In process of formation)

Officers

- Neville Miller, President
- Everett Revercomb, Secretary-Treasurer

Directors

- Neville Miller
- Walter J. Damm, WTMJ, Milwaukee
- John Elmer, WCBM, Baltimore
- Edward R. Klauber, CBS
- Louise R. Lohr, NBC
- S. R. Rosenbaum, WFIL, Philadelphia
- John Shepard 3rd, Yankee Network

COMMITTEES

EXECUTIVE COMMITTEE—Neville Miller, NAB, chairman; Edwin W. Craig, WEM, Nashville; John Elmer, WCBM, Baltimore; Herbert Hollister, KANS, Wichita, Kan.; John A. Kennedy, WCHS, Charleston, W. Va.; Paul W. Moroney, WTIC, Hartford; Harry C. Wilder, WSYR, Syracuse.

CODE COMPLIANCE COMMITTEE—Edgar L. Hill, WMED, Peoria, Ill., chairman; Martin Campbell, WFAA, Dallas; Edward Carlini, WMAZ, Macon, Ga.; Earl J. Glade, KSL, Salt Lake City; Edward Klauber, CBS, New York; Don Seale, KOIL, Omaha; Calvin J. Smith, KFAC, Los Angeles; Theodore Streibert, WOB, MBS, New York; Niles Trammell, NBC, New York; E. M. Kirby, NAB, secretary.

ACCOUNTING COMMITTEE—C. T. Lucy, WRVA, Richmond, chairman; H. W. Batchelder, WFBR, Baltimore; S. R. Dean, CBS, New York; F. J. Gluck, WBOC, Charlotte, N. C.; N. L. Kidd, WSYR, Syracuse; Harry F. McKee, NBC, New York.

COMMITTEE TO STUDY QUESTION OF ASSOCIATE MEMBERSHIPS IN NAB—John J. Gillin, Jr., WOW, Omaha, chairman; Earl H. Gammons, WCCO, Minneapolis; Eugene P. O'Fallon, KFEL, Denver.

LAROR COMMITTEE—Samuel R. Rosenbaum, WFIL, Philadelphia, chairman; Ralph R. Bryant, KJBS, San Francisco; Don E. Elmer, WYNC, Asheville, N. C.; Earl J. Glade, KSL, Salt Lake City; George W. Norton, Jr., WAVE, Louisville; J. H. Ryan, WSPD, Toledo; Lloyd C. Thomas, WBOK, Rockford, Ill.

LEGISLATIVE COMMITTEE—John A. Kennedy, WBK, Charleston, W. Va., chairman; Harry C. Anthony, WJW, Washington; M. J. W. Craig, WEM, Nashville; E. S. Owens, KFBE, Bette, Mont.; William E. Dean, WOL, Washington; John Elmer, WCBM, Baltimore; Arthur L. W. Russell, WNCN, Raleigh, N. C.; Thomas C. Stedman, WOB, New York.

WAGE AND HOUR ACT COMMITTEE—Joseph L. Miller, NAB, Washington, setting chairman; H. W. Batchelder, WFBR, Baltimore; William R. Deigh, WOL, Washington; John V. L. Hogan, WQXR, New York; C. T. Lucy, WRVA, Richmond.

NAB-RMA COMMITTEE—For NAB: Neville Miller, NAB, Washington, D. C., chairman; Edward Klauber, CBS, I. R. Lounsberry, WOB, WKRW, Buffalo; Theodore Streibert, MBS, For RMA: James M. Skinner, Philadelphia Storage Battery Co., Philadelphia, chairman; Henry C. Bonfig, RCA Manufacturing Co. Inc., Camden, N. J.; Powell Crooley, The Crooley Corp., Cincinnati; Conrad E. F. McDonald Jr., Zenith Radio Corp., Chicago; A. S. Wells, Wells-Gardner Co., Chicago (ex-officio member).

Censored by the

NAB

Lang-Worth is the largest TAX-FREE music library in the world. Lang-Worth is the ONLY tax-free library guaranteed and insured in its entirety for the Broadcasters' protection.

LANG-WORTH, INC., NEW YORK, N. Y.

PLAINTIFFS' DEPOSITION EXHIBIT 68-A

Map of Network of Columbia Broadcasting System

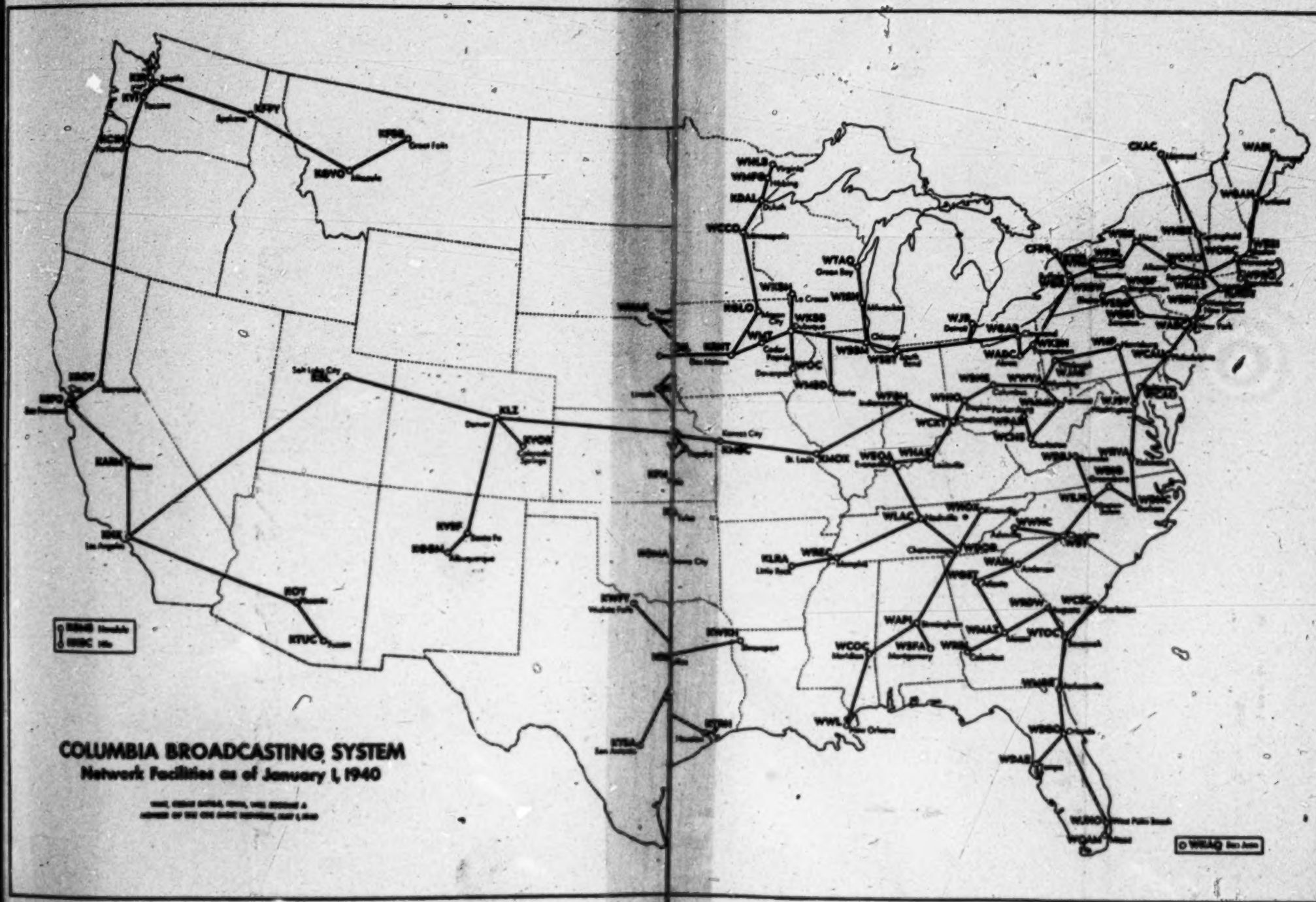
(As of January 1, 1940)

1700

1066C

1940 Yearbook Number • Page 179

PLAINTIFFS' DEPOSITION EXHIBIT 68-A



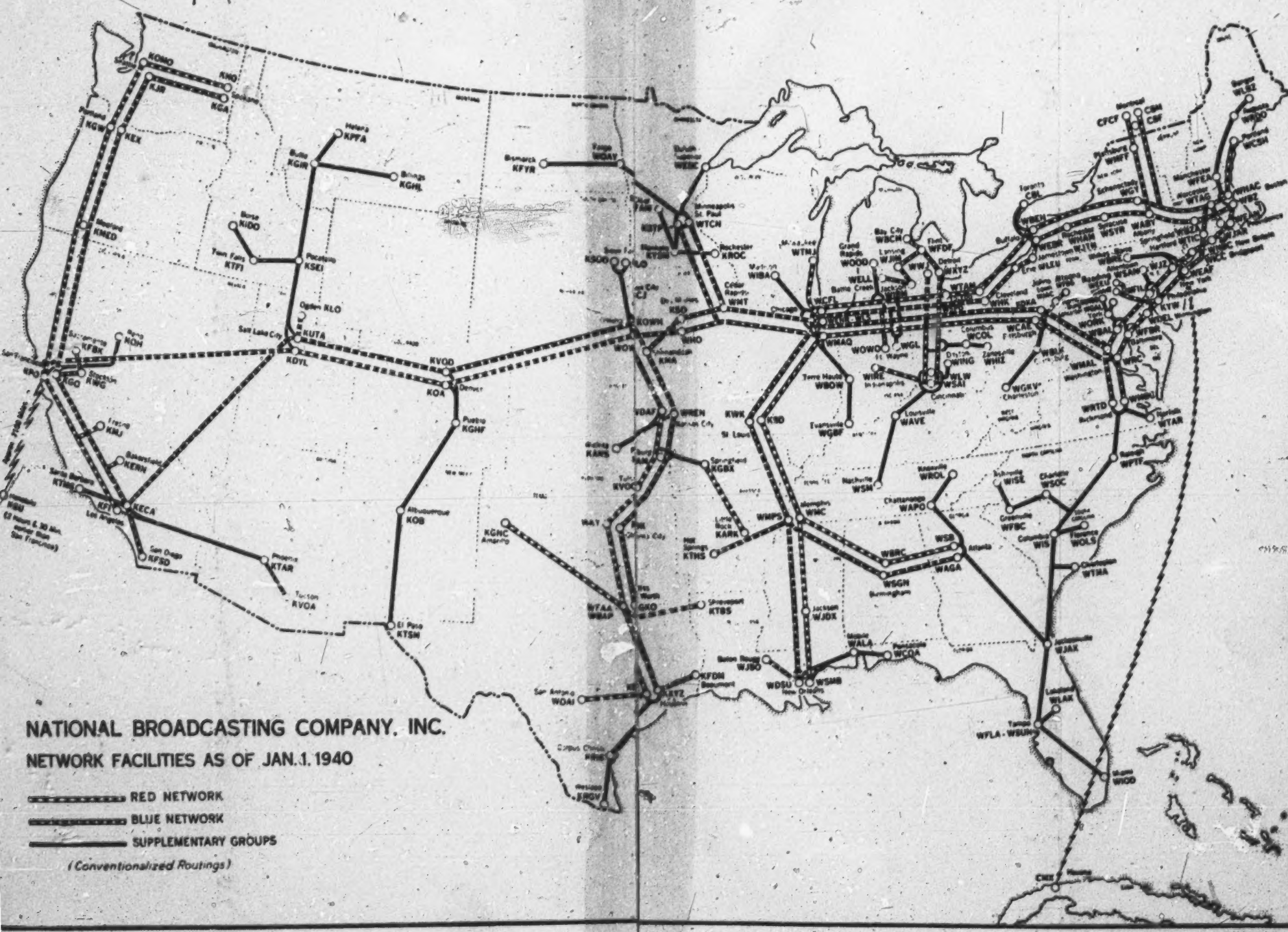
BROADCASTING • Broadcast Advertising

PLAINTIFFS' DEPOSITION EXHIBIT 68-B

Map of Networks of the National Broadcasting Company

1701

(As of January 1, 1940)



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[fol. 1702] PLAINTIFFS' DEPOSITION EXHIBIT 69—Omitted

1068

(Here follows 1 photolithograph, side folio 1703.)

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Nice shootin' Kid!

"MUSICAL HITS"

1199 TAX-FREE "MUSICAL HITS"

AVAILABLE TO RADIO ADVERTISERS EVERYWHERE
 THROUGH *Lang Worth* Licensed STATIONS

Instrumental Selection

- 220 11:00 (Instrumental)
- 198 11:30 (Instrumental)
- 131 12:00 (Instrumental)
- 50 12:30 (Instrumental)
- 37 1:00 (Instrumental)
- 44 1:30 (Instrumental)
- 49 2:00 (Instrumental)
- 34 2:30 (Instrumental)
- 37 3:00 (Instrumental)

790 Instrumental

- 7 4:00 (Mixed)
- 40 4:30 (Mixed)
- 24 5:00 (Mixed)
- 24 5:30 (Mixed)
- 29 6:00 (Mixed)
- 38 6:30 (Mixed)
- 30 7:00 (Mixed)

409 Vocal

"Musical Hits"

TOTAL - 1199 Tax-Free "Musical Hits"
 ADVERTISERS: (Custom built programs) applicable to an individual station's needs.
 This service provides quality programs at minimum cost. Musical Hits
 RADIO STATIONS: (Real playing time) transcription and continuous over six-quarter
 hour program. Musical Hits is a ready-to-go program for immediate delivery.

LANG WORTH FEATURE PROGRAMS, INC.

1615 Broadway, New York 19, N.Y.
 LANG WORTH FEATURE PROGRAMS, INC.
 420 Madison Avenue
 New York City



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[fol. 1704] PLAINTIFFS' DEPOSITION EXHIBITS 71-A AND 71-B
—Omitted

[fol. 1705] PLAINTIFFS' DEPOSITION EXHIBIT 72-A

This exhibit is p. 216 of the 1939 Yearbook of the Broadcasting Magazine and shows the stations subscribing to transcription program libraries, among them being the following stations in the State of Florida:

City	Station	Service
Daytona Beach.....	WMPJ	AMP, LW
Gainesville.....	WRUF	WBS, NAB
Jacksonville.....	WJAX	NBC
Jacksonville.....	WMBR	NAB, MG
Lakeland.....	WLAJ	WBS
Miami.....	WIOD	AMP, NBC
Miami.....	WQAM	WBS, NAB
Miami Beach.....	WKAT	AMP
Orlando.....	WDBO	NBC
Pensacola.....	WCOA	MG
St. Augustine.....	WFOY	WBS
St. Petersburg.....	WSUN	WBS
Tallahassee.....	WTAL	WBS, NAB
Tampa.....	WDAE	SR
Tampa.....	WFLA	NBC
West Palm Beach.....	WJNO	WBS

For the year 1940, 5 additional stations in Florida were added to the above list (as shown in Plaintiffs' Exhibit 74 omitted from this record.)

[fol. 1706] PLAINTIFFS' DEPOSITION EXHIBIT 72-B

A page from the yearbook of Broadcasting Magazine for the year 1939 showing stations affiliated with the World Transcription System, and the hourly, half-hourly and quarter-hourly rates of such stations. These stations are located throughout the United States, the Florida station being station WIOD located at Miami, Florida; the night rates being \$150, \$90 and \$60 per hour, half-hour and quarter-hour respectively, and the day rates being \$75, \$45 and \$30 for an hour, half-hour and quarter-hour respectively. It is stated therein that studios and complete recording facilities are available in New York, Chicago and Hollywood; services of program, continuity and production departments being available without extra charge.

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[fol. 1704] PLAINTIFFS' DEPOSITION EXHIBITS 71-A AND 71-B
—Omitted

[fol. 1705] PLAINTIFFS' DEPOSITION EXHIBIT 72-A

This exhibit is p. 216 of the 1939 Yearbook of the Broadcasting Magazine and shows the stations subscribing to transcription program libraries, among them being the following stations in the State of Florida:

City	Station	Service
Daytona Beach.....	WMFJ	AMP, LW
Gainesville.....	WRUF	WBS, NAB
Jacksonville.....	WJAX	NBC
Jacksonville.....	WMBR	NAB, MG
Lakeland.....	WLAK	WBS
Miami.....	WIOD	AMP, NBC
Miami.....	WQAM	WBS, NAB
Miami Beach.....	WKAT	AMP
Orlando.....	WDBO	NBC
Pensacola.....	WCOA	MG
St. Augustine.....	WFOY	WBS
St. Petersburg.....	WSUN	WBS
Tallahassee.....	WTAL	WBS, NAB
Tampa.....	WDAE	SR
Tampa.....	WFLA	NBC
West Palm Beach.....	WJNO	WBS

For the year 1940, 5 additional stations in Florida were added to the above list (as shown in Plaintiffs' Exhibit 74 omitted from this record.)

[fol. 1706] PLAINTIFFS' DEPOSITION EXHIBIT 72-B

A page from the yearbook of Broadcasting Magazine for the year 1939 showing stations affiliated with the World Transcription System, and the hourly, half-hourly and quarter-hourly rates of such stations. These stations are located throughout the United States, the Florida station being station WIOD located at Miami, Florida; the night rates being \$150, \$90 and \$60 per hour, half-hour and quarter-hour respectively, and the day rates being \$75, \$45 and \$30 for an hour, half-hour and quarter-hour respectively. It is stated therein that studios and complete recording facilities are available in New York, Chicago and Hollywood; services of program, continuity and production departments being available without extra charge.

1070

[fol. 1707] PLAINTIFFS' DEPOSITION EXHIBIT 73—Omitted
PLAINTIFFS' DEPOSITION EXHIBIT 74—Omitted

[fol. 1708] PLAINTIFFS' DEPOSITION EXHIBIT 75-A

Advertisement of the World Broadcasting System from the 1940 Yearbook of Broadcasting Magazine showing its service in 200 stations throughout the United States, including 5 stations in the State of Florida.

[fol. 1709] PLAINTIFFS' DEPOSITION EXHIBIT 76

Gross License Fees Collected From the United States

1935.....	4,451,692.62
1936.....	5,206,316.58
1937.....	5,926,941.57
1938.....	5,976,577.31
1939.....	6,511,753.59
Total.....	\$28,073,281.67

Radio Receipts

1935.....	2,680,406.46
1936.....	3,239,181.50
1937.....	3,878,751.94
1938.....	3,845,206.34
1939.....	4,142,024.44
Total.....	\$17,785,570.68

Accounting Dept.

Resume

ASCAP Foreign Accounts

	1936		1937		1938		1939	
	Received	Paid	Received	Paid	Received	Paid	Received	Paid
Argentina.....	2,080.76			222.28			2,122.11	2,496.60
Australia.....			4,305.24					
Austria.....		4,000.00	3,616.24	22,727.49	18,572.98	23,000.28	20,345.62	34,524.26
Belgium.....						200.00		908.53
Brazil.....	748.50				711.16	892.80	85.00	200.00
Bulgaria.....							170.00	200.00
Canada.....	20,220.28		35,270.94		35,009.04			454.27
Czechoslovakia.....	125.86							
Denmark.....	3,450.34	500.00			6,884.59	1,127.27	3,011.51	1,817.07
England.....	109,314.21	95,000.00	121,527.83	95,000.00	160,992.11	240,777.57		58,876.91
Finland.....			165.61	487.07	166.41	471.00		200.00
France.....	115,591.74		87,165.94	46,512.43	58,443.00	92,352.96	96,807.66	83,161.46
Germany.....		120.00			28,849.74	36,662.51	12,356.05	14,536.53
Hungary.....			7,255.60	2,590.46	1,775.94	2,249.93	1,158.38	1,362.80
Italy.....	14,500.03		210.52		25,056.01	26,983.05	14,190.08	16,694.21
Jugo Slavia.....							649.78	100.00
Norway.....	2,612.64			1,389.26		3,436.95	808.67	5,451.20
Poland.....							1,507.30	
Portugal.....	176.45		137.32	277.85	123.70	139.22	237.49	908.53
Rumania.....			477.00		2,085.19	300.00	668.87	100.00
Spain.....								279.31
Sweden.....	13,212.69				22,532.03	682.95		566.48
Switzerland.....			4.21	277.85		139.22	5.74	100.00
	282,122.50	99,620.00	260,145.42	160,474.68	337,262.50	429,505.51	163,124.26	222,838.16

January 20, 1940

[Vol. 1711]

PLAINTIFFS' DEPOSITION EXHIBIT 78

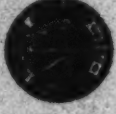
Royalties Paid to Certain Members 1932-1939, Inc.

	1932	1933	1934	1935	1936	1937	1938	1939	Total
Gene Buck.....	\$3,000.00	\$3,000.00	\$4,197.03	\$6,233.45	\$7,238.09	\$8,740.32	\$7,932.60	\$8,137.12	\$48,543.61
Carl Fischer, Inc.....	31,116.31	42,178.26	58,084.70	74,669.38	102,211.79	112,543.12	94,808.05	99,490.58	615,102.19
G. Schirmer, Inc.....	31,116.31	42,178.26	58,084.69	74,669.38	102,903.23	107,244.16	94,977.87	94,425.42	605,599.32
Irving Berlin, Inc.....	35,432.39	52,756.58	70,921.98	92,546.48	141,716.04	123,442.37	115,671.53	126,793.81	769,331.18
Decca Taylor.....	1,629.66	3,417.73	6,522.64	9,350.14	10,932.13	13,110.49	11,928.88	12,205.68	69,097.35
Oley Speaks.....	4,478.43	6,835.46	9,598.26	12,466.88	14,576.16	17,480.65	15,905.16	16,274.24	97,615.24
William J. Hill.....	220.00	3,226.39	3,062.94	2,935.04	6,560.00	8,311.65	7,952.60	12,205.68	44,474.30
Estate of Ethelbert Nevin..	4,478.43	6,835.46	9,598.26	12,466.88	14,576.16	17,480.65	15,905.16	16,274.24	97,615.24
Estate of Victor Herbert....	4,478.43	6,835.46	9,598.26	12,466.88	14,576.16	17,480.65	15,905.16	16,274.24	97,615.24
Estate of John P. Sousa....	4,478.43	6,835.46	9,598.26	12,466.88	14,576.16	17,480.65	15,905.16	16,274.24	97,615.24

(Here follow 4 photolithographs, side folios 1712, 1712a, 1713, 1713a.)

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by *[Signature]*



FEB - 9 1940

1939

for use by *[Signature]* Publisher

STANDARD UNIFORM POPULAR SONGWRITERS CONTRACT

AGREEMENT made this _____ day of _____, 19____, between

(hereinafter called "Publisher"), and

jointly and/or severally, (hereinafter called "Writer(s)");

WITNESSETH:

1. The Writer(s) hereby sells, assigns, transfers and delivers to the Publisher, its successors and assigns, a certain hereinafter unpublished original musical composition, written and/or composed by the above named Writer(s) now entitled

including the title, words and music hereby, and the right in some copyright thereby throughout the entire world, and to have and to hold the said copyright and all other rights therein unto the said Publisher, subject to the terms of this American Society of Composers, Authors and Music Publishers.

2. The Writer(s) hereby warrants that the said composition is his sole, exclusive and original work, and that he has full right and power to make the within agreement, and that there exists no adverse claim to or in the said composition, except as aforesaid in Clause 2 hereof and except such rights as are specifically set forth in Paragraph 17 hereof.

4. In consideration of this agreement, the Publisher agrees to pay the Writer(s) as follows:

- (a) An advance of \$_____ in hand paid, receipt of which is hereby acknowledged, which sum shall be deductible from any payments hereafter becoming due the Writer(s) under this agreement.
- (b) In respect of regular piano copies sold and paid for at wholesale in the United States of America, royalty this per copy as follows:

Wholesale price	cents	--	--	--	royalty	cents	per	copy.
Wholesale price	cents	--	--	--	royalty	cents	per	copy.
Wholesale price	cents	--	--	--	royalty	cents	per	copy.
Wholesale price	cents	(or less)	--	--	royalty	cents	per	copy.

- (c) A royalty _____ % (in no case however less than 50% jointly) of all net sums received by the Publisher in respect of regular piano copies and/or orchestrations thereof sold and paid for in any foreign country.
- (d) A royalty of _____ cents per copy of orchestrations thereof in any form sold and paid for in the United States of America.
- (e) The said composition shall not be published in any form or composite work until after publication thereof in regular piano copies, and subsequent to said date, only upon such terms and conditions as may hereafter be agreed to in writing by the parties hereto.
- (f) Unless and/or composite works as referred to in the next preceding paragraph shall be deemed to include any publication of two or more compositions within the same volume and/or binding.
- (g) For purposes of royalty statements, if a composition is printed and published in the United States of America, as to copies and rights sold in the Dominion of Canada, revenue herefrom shall be considered as of domestic origin. If, however, the composition is printed by a party other than the Publisher in the Dominion of Canada, revenue from sales of copies and rights in Canada shall be considered as originating in a foreign country.
- (h) As to "professional material"—not sold or made, no royalty shall be payable.

(1) An amount equal to 7% (in no case, however, less than 50% jointly) of:

All receipts of the Publisher in respect of any license issued authorizing the manufacture of parts of instruments serving to mechanically reproduce the said composition, or to use the said composition in synchronization with sound motion pictures, or to reproduce it upon so-called electrical transmissions for broadcasting purposes; and of any and all receipts of the Publisher from any other source or right, known or which may hereafter come into existence, all such sums to be divided amongst the Writer(s) of said composition as provided in Paragraph 5 hereof; provided, however, that if the Publisher administers the said license, or any of them, through the agent, trustee or other administrator acting for a substantial part of the industry and not in the exclusive employ of the Publisher, the Publisher, in determining his receipts, shall be entitled to deduct from gross license fees paid by the licensee a sum equal to the charges paid by the said Publisher to said agent, trustee or administrator, said deduction in no event, however, to exceed 10% of the license fee.

The percentage of the Writer(s) on moneys received from foreign sources shall be computed on the Publisher's net receipts.

The Writer(s) shall not be entitled to any share of the moneys distributed to the Publisher by the American Society of Composers, Authors and Publishers or any other performing rights society throughout the world which makes a distribution to the Writer(s) either directly or through the American Society of Composers, Authors and Publishers of an amount which, in the aggregate, is at least equal to the aggregate amount distributed to Publishers.

- (1) Upon the use of the composition in synchronization with motion picture under any built or block license heretofore made, the Writer(s) shall be entitled to receive an amount equal to _____ % (in no case less than 50% jointly) of the license fee for each synchronization by the licensee, but in no event less than the following:

FOR WORLD-WIDE USE

For Entire Uses

In Shorts

\$25 for each background instrumental or background vocal use.

In Features

\$25 for each background instrumental or background vocal use.

perceptive time \$25.00 for each instrumental use, \$30 for each vocal instrumental use.

the Publisher may appoint agents or representatives in countries outside of the United States and Canada to grant licenses for the use of said composition on the customary royalty fee basis.

A license or transaction in built or block shall be deemed to mean the licensing of two or more compositions where the currently prevailing license fees are not charged separately for each separate use of such composition.

- (1) Except to the extent that the Publisher and Writer(s) have heretofore or may hereafter agree to or vote in the American Society of Composers, Authors and Publishers the said rights or the right to grant licenses therefor, it is agreed that no licenses shall be granted without the consent, in each instance, of the Writer(s) for the use of the said composition by means of television, or by any means, or for any purpose not commercially established, or for which license fees were not granted by the Publisher on initial compositions prior to June 1, 1937.

- (a) The Publisher shall not, without the written consent of the Writer(s) in each case, give or grant any right or license (a) to use the title of the musical composition, or (b) for the exclusive use of said composition in any form or for any purpose, or for any period of time, or for any territory, or (c) to give a dramatic representation of the said musical composition or to dramatize the plot or story thereof, or (d) for a vocal vocal rendition of said composition in synchronization with a motion picture. If, however, the Publisher shall give to the Writer(s) written notice, by registered mail or telegram, specifying the right or license to be given or granted, the name of the licensee and the terms and conditions thereof, including the price or other compensation to be received thereby, then, upon the Writer(s) (or any one or more of them, or anyone acting on their behalf) shall, within seventy-two hours (exclusive of Saturdays, Sundays and holidays) after the delivery of such notice, object thereby, the Publisher may grant such right or license in accordance with the said notice without first obtaining the consent of the Writer(s). Such notice shall be deemed sufficient if sent to

or at the address last furnished to the Publisher in writing

by the Writer(s) or any of them). The tender of delivery of such notice at such address by the post office carrier or the telegraph company messenger shall be deemed a delivery hereunder.

- (a) Any portion of the moneys which may become due to the Writer(s) from license fees (in excess of off-set), whether received directly from the licensee or from the agent, administrator and trustee, shall, if not paid immediately on the receipt thereof by the Publisher, belong to the Writer(s) and shall be held in trust for each Writer(s) until payment is made; the ownership of said trust fund by the Writer(s) shall not be questioned whether the moneys are physically segregated or not.

1712a

5. It is understood and agreed by and between all of the parties hereto that all sums hereunder payable jointly to the Writer(s) shall be divided amongst them respectively as follows:

Name

Share

6. The Publisher shall render the Writer(s), as above, on or before each _____ covering the 3 months ending _____; each _____ covering the 3 months ending _____; hereafter, so long as he shall continue publication or the licensing of any rights in the said composition, royalty statements accompanied by remittance of the amount due, provided, however, that if it shall hereinafter turn the content of the Publisher to render royalty statements accompanied by remittance semi-annually, such amount may be continued.

7. The Publisher shall be entitled to withdraw from the said stated composition within _____ by failing to do so the Writer(s) shall have the right in writing to demand the return of said _____

8. If longer publication rights in the said composition are separately conveyed, whether then or a part of the Publisher's estate, and/or future ending, any amount received in respect thereof shall be divided in accordance with Section 4, subdivision (1) hereof and credited to the account of the respective Writer(s).

9. The Writer(s) or his representative may appoint a certified public accountant who shall at any time during usual business hours have access to all records of the Publisher relating to the said composition for the purpose of verifying royalty statements rendered or which are dispensed under the terms hereof.

10. (a) The Publisher shall, upon written demand of the Writer(s) or his (their) representative, cause the agent, broker or subordinator referred to above, to furnish to the Writer(s) or his (their) representative, statements showing in detail all licenses granted, use had and payments made therefor in connection with said composition (other than licenses, use and payments for commercial phonograph records and music rolls) for which licenses or permits were granted or payments received by the Publisher without the intervention of said agent, broker or subordinator, and to permit the Writer(s) or his (their) representative to inspect at the place of business of the Publisher, all books, records and documents relating to said composition and all licenses granted, use had and payments made therefor, with right of inspection to include, but not by way of limitation, the right to examine all original manuscripts and records relating to use and payment by manufacturers of commercial phonograph records and music rolls. Nothing in this paragraph contained, furthermore, shall be deemed or construed to relieve the Publisher of its obligation to keep, in full, a statement of each copy of the composition in commercial phonograph record and music rolls or the obligation to keep a statement of each copy of the composition in the published royalty statement to be rendered to the Writer(s) in accordance with Paragraph 6 of this agreement.

(b) The Publisher shall from time to time, upon written demand of the Writer(s) or his (their) representative, furnish to the Writer(s) or his (their) representative, statements showing in detail all licenses granted, use had and payments made therefor in connection with said composition (other than licenses, use and payments for commercial phonograph records and music rolls) for which licenses or permits were granted or payments received by the Publisher without the intervention of said agent, broker or subordinator, and to permit the Writer(s) or his (their) representative to inspect at the place of business of the Publisher, all books, records and documents relating to said composition and all licenses granted, use had and payments made therefor, with right of inspection to include, but not by way of limitation, the right to examine all original manuscripts and records relating to use and payment by manufacturers of commercial phonograph records and music rolls. Nothing in this paragraph contained, furthermore, shall be deemed or construed to relieve the Publisher of its obligation to keep, in full, a statement of each copy of the composition in commercial phonograph record and music rolls or the obligation to keep a statement of each copy of the composition in the published royalty statement to be rendered to the Writer(s) in accordance with Paragraph 6 of this agreement.

11. In the event that the Publisher shall fail or refuse, within sixty days after written demand, to furnish said statements or cause the same to be furnished, or to make available or cause to be made available to the Writer(s) or his (their) representative all of such books, records or documents as aforesaid, or in the event that the Publisher shall fail to make the payment of any royalties due within thirty days after written demand therefor, then the Writer(s) shall have the option, to be exercised upon ten days' written notice, to terminate this agreement.

Upon such termination, all rights of the Publisher, of any and every nature, in and to said composition, shall cease and terminate and the said rights, including but not limited to the right to secure copyright and/or any copyright license (as owned by the Publisher), shall revert to and become the property of the Writer(s) and shall be assigned to him (them). The Publisher agrees that it will execute any and all assignments or other documents which may be necessary or proper to vest the said rights in the Writer(s).

12. Written demands and notices provided for in Paragraphs 10 and 11 hereof shall be sent to the Publisher by registered mail.

13. Any legal action brought by the Publisher against any alleged infringer of the said composition shall be initiated and prosecuted at his sole expense, and of any recovery made by him as a result thereof, after deduction of the expense of the litigation, a sum equal to fifty per cent. shall be divided as agreed among the Writer(s) of the said composition.

(a) If a claim is presented against the Publisher alleging that the said composition is an infringement upon some other, and because thereof the Publisher is jeopardized, he shall thereupon serve written notice upon the Writer(s), containing the full details of such claim and demanding that the claimant has been adjudicated or settled shall pay any expenses incurred by the Writer(s) hereunder in answer to any bank or trust company to be held pending the outcome of such claim, including attorneys' fees. If no suit is filed within twelve months after written notice to the Writer(s) by the Publisher of the adverse claim, the said bank or trust company shall advance and pay to the Writer(s) all sums held in escrow, plus any interest which may have been earned thereon. Such payment shall be without prejudice to the rights of the Publisher in event of a subsequent adverse adjudication.

(b) From and after the service of summons in a suit for infringement filed against the Publisher in respect of the said composition, any and all payments hereunder thereafter coming due to the Writer(s) shall be paid by the Publisher in trust to any bank or trust company until the suit has been finally adjudicated and then to be disbursed accordingly, unless the Writer(s) shall elect to file an acceptable bond in the sum of such payments, in which event the sum due shall be paid to him.

14. The parties hereto hereby agree to submit to arbitration under the rules of the American Arbitration Association and pursuant to the New York Arbitration Law any differences arising in relation to the payment of royalties due or in default hereunder, and hereby agree individually and jointly to abide by and perform any award rendered by the arbitrator and that a judgment of the Supreme Court of the State of New York may be entered upon such award.

15. This agreement is binding upon the parties hereto and their respective successors in interest.

16. These blanked copies hereof are returned by the parties, the original copy of which shall remain in possession of the Publisher, the duplicate in possession of the Writer(s), and the original thereof be forwarded by mail by the Publisher to the American Arbitration Association.

Writer	_____	(L.S.)
Address	_____	
Writer	_____	(L.S.)
Address	_____	
Writer	_____	(L.S.)
Address	_____	
Writer	_____	(L.S.)
Address	_____	
Publisher	_____	
By	_____	1713a
Address	_____	

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[fol. 1714] DEFENDANTS' DEPOSITION EXHIBIT B

Agreement made between Song Writers Protective Association, an unincorporated association (hereinafter referred to as "S. P. A."), party of the first part, and — (hereinafter referred to as the "publisher"), party of the second part, Witnesseth:

In consideration of the sum of One (\$1.00) Dollar and other good and valuable considerations, each to the other in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the parties agree as follows:

First: S. P. A. hereby approves, for use during the term of this agreement, the form of contract, a copy of which is hereto annexed and made a part hereof, marked Exhibit A, which shall be known as the "Standard Uniform Popular Songwriters Contract" and which is herein referred to as the "Uniform Contract". It is agreed that the publisher may note on any printed form of said Uniform Contract (prepared without insertions in the blank spaces) that it is the official form endorsed by S. P. A.

Second: (a) The Publisher agrees to use the said Uniform Contract exclusively during the term hereof in connection with the acquisition of any and all compositions from members of S. P. A., other than educational numbers and except such compositions which may, during the term hereof, be acquired pursuant to the terms of written agreements made prior to June 1, 1937, or written extensions or renewals thereof made subsequent to June 1, 1937 under options contained in the said prior agreements, and except in connection with the acquisition of renewal copyrights on musical compositions which were published and copyrighted prior to June 1, 1937.

(b) The Publisher agrees to furnish to S. P. A., within thirty days after the execution hereof, a statement of said written agreements made prior to June 1, 1937, or extensions or renewals thereof, showing the name of the writer with whom such agreement has been made, the date thereof, and shall forthwith upon the exercise of any option give notice thereof to S. P. A. The Publisher hereby consents that any member of S. P. A., party to such agreement, may

make known to S. P. A. any further information concerning the same.

(c) The term "educational work" is limited to mean works compiled for musical instruction and arranged for and intended to be used by teachers and students of music, for the sole purpose of giving instruction in and studying music, and shall not include popular songs, standard works, dramatic-musical compositions or any other musical compositions intended to be sung, played or performed for any other purposes.

Third: Any and all compositions, other than compositions excepted from the terms of this agreement as provided in Subdivision (a) of Paragraph "Second" hereof, acquired by the Publisher from a member of S. P. A. since May 31, 1937, shall be deemed to have been acquired pursuant to the terms and provisions hereof, and if any of the terms of an agreement made on or after June 1, 1937 under which a composition was acquired, are less favorable to the writer than those contained in the Uniform Contract, then such less favorable terms shall be disregarded, and there shall be substituted in the place thereof the terms of the Uniform Contract. Provided, however, that if, in order to conform to the minimum terms of said Uniform Contract, an increase in the rate of royalties is made necessary, then such increased rates shall be effective only from and after [fol. 1715] September 30, 1939, and all accountings for transactions thereafter shall be in accordance with the terms and provisions hereof.

The Publisher agrees to furnish to S. P. A. within thirty days after the execution hereof, a complete list of the compositions acquired by the Publisher from members of S. P. A. since the 1st day of June, 1937, and prior to the date of execution hereof. S. P. A. agrees to furnish to the Publisher, within five days after the execution hereof, a list of its members.

Fourth: Should the Publisher acquire, during the term hereof, any musical compositions of a member of S. P. A., covered by this agreement, under any contract, written or oral, which shall contain terms or conditions less favorable to said member than those provided for in the Uniform Contract, then such less favorable terms shall in each instance be disregarded, and the minimum terms and conditions of the Uniform Contract shall be substituted therefor.

Fifth: If compliance with the terms of this agreement with respect to compositions heretofore acquired by the Publisher shall require such a revision of any term or terms which would make it impossible for the Publisher to perform the terms of any written agreement made by such Publisher prior to August 1, 1939, with a person or persons other than the writer or writers, then the Publisher shall be entitled to a modification of such revised term or terms to the limited extent which will enable the Publisher to perform such prior agreement, and upon such terms and conditions as may be agreed upon between the parties hereto, or if they are unable to agree, then upon such terms and conditions as may be imposed by a Board of Arbitration, one of which is to be selected by the Publisher, one by S. P. A., and the third by the two so selected.

The Publisher shall, within ninety days after the date hereof, file with the Chairman of the Board of Music Publishers' Protective Association and with the President of S. P. A., a list of all contracts containing commitments for which a waiver is required under this Paragraph "Fifth" of this agreement.

Sixth: (a) The Publisher shall, upon written demand of S. P. A. cause the agent, trustee or administrator referred to in the Uniform Contract, to furnish to S. P. A., statements showing in detail all licenses granted, uses had and payments made therefor, on all compositions acquired by the Publisher from members of S. P. A. under the provisions hereof, for which licenses or permits were granted, or payments received, by or through the said agent, trustee or administrator, and to permit S. P. A. by a duly authorized representative to inspect at the place of business of such agent, trustee or administrator, all books, records and documents of the agent, trustee or administrator relating thereto.

(b) The Publisher shall from time to time, upon written demand of S. P. A., furnish to S. P. A. statements showing in detail all licenses granted, uses had and payments made therefor (other than licenses, uses and payments for commercial phonograph records and music rolls), on all compositions acquired by the Publisher from members of S. P. A. under the provisions hereof and for which licenses or permits were granted or payments received by the Publisher without the intervention of the said agent, trustee or ad-

ministrator, and to permit S. P. A., by a duly authorized representative, to inspect, at the place of business of the Publisher, all books, records and documents, relating to such compositions and all licenses granted, uses had and payments made therefor, such right of inspection to include, [fol. 1716] but not by way of limitation, the right to examine all original accountings and records relating to uses and payments by manufacturers of commercial phonograph records and music rolls. Nothing in this paragraph contained, furthermore, shall be deemed or construed to relieve the Publisher of its obligation to pay royalties on the use of the compositions on commercial phonograph records and music rolls or the obligation to include a statement of such royalties in the periodical royalty statements to be rendered to the Writers in accordance with Paragraph 6 of the Uniform Contract.

(c) In the event that the Publisher shall fail or refuse, within sixty days after written demand, to furnish said statements or cause the same to be furnished, or to make available or cause to be made available, to S. P. A., as above provided, all of such books, records and documents, then the same shall be deemed to be a refusal to comply with the terms and conditions of the individual contracts made by its members, as though each of said members shall have individually made such demand under the Uniform Contract, and with the same effect as if the refusal had been to the specific demand of the writer of each composition with respect to each composition.

(d) The written demands provided for in this Paragraph "Sixth" shall be sent to the Publisher by registered mail.

Seventh: The terms set forth in the uniform Contract are to be deemed minimum terms, and nothing herein or therein contained shall be deemed or construed to prevent or prohibit any writer from entering into an agreement wherein and whereby the terms and conditions shall be more favorable to the writer than those contained in said Uniform Contract. Similarly, nothing herein contained shall be deemed or construed to require the Publisher to enter into any agreement wherein and whereby the terms and conditions shall be more favorable to the writer than those contained in said Uniform Contract.

Eighth: Should S. P. A. enter into any agreement with any other publisher covering the subject matter hereof upon terms more favorable to said other publisher, then the Publisher hereunder shall be entitled thereafter to such more favorable terms, and this agreement shall, upon demand of the Publisher, be amended accordingly. S. P. A. agrees to give the Publisher notice of any contract made by it with another publisher on terms different than those herein contained.

Ninth: As and when, during the term hereof, the Publisher shall acquire from a member or members of S. P. A. each musical composition, it shall deposit with S. P. A. an executed copy of the contract by which the said composition is so acquired. Upon such deposit, and provided that the said contract is in all respects in accordance with the terms hereof and of the Uniform Contract, S. P. A. agrees to deliver, or cause to be delivered, to the Publisher a release of any and all rights, if any, of S. P. A. and of Ray Henderson, Gus Kahn and George Meyer, as Administrators, in and to the musical composition named in the contract so deposited. Provided, however, that should the Publisher acquire any such composition subject to the rights of a third person (other than the American Society of Composers, Authors and Publishers), then:

[fol. 1717] (a) The releases to be delivered by S. P. A. shall exclude any rights vested in S. P. A. or the Administrators which may be claimed by said third person; and

(b) S. P. A. shall not be obligated to furnish said releases if, as a result of said reservation or the agreement giving rise to the rights so reserved, either the Publisher or said third person, directly or indirectly, shall acquire, or shall have acquired, any rights in said composition on terms less favorable to the writer than those provided for in the Uniform Agreement.

Tenth: If either of the parties hereto shall fail, refuse or neglect to perform the provisions of this agreement and such default shall continue for fifteen days after receipt of notice by registered mail to repair the breach, then, in such event, the party not committing the breach shall have the right, at its or his option, to terminate this agreement, such option to be exercised by notice in writing by regis-

tered mail addressed to the party who has committed the breach.

Eleventh: This agreement shall be effective as at June 1, 1937, and shall continue until May 31, 1940, unless terminated prior thereto in accordance with the terms hereof. The Publisher, however, shall have and is hereby given the option, provided it is not in default in the performance of the terms and conditions of this agreement, to extend the term of this agreement to December 31, 1946, by giving to S. P. A. written notice of its election to exercise the said option not later than May 1, 1940.

In Witness Whereof, the parties hereto have hereunto set their hands and seals this day of , 1939.

Song Writers' Protective Association. By —, — L. S.

[fol. 1718] DEFENDANTS' DEPOSITION EXHIBIT C

Telephone Wasatch 4505

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
Intermountain Branch
623 Continental Bank Building
Salt Lake City, Utah
ASCAP

Received, June 14, 1937 K. D. Y. L.
Hugo B. Anderson, Resident Counsel

June 9, 1932

S. S. Fox
Mgr. Radio Station KDYL,
Ezra Thompson Building,
City

DEAR MR. FOX:

Paragraph 5 of the existing license of this society with your broadcasting station provides:

"This license is limited solely to the copyrighted works of members of Society in programs rendered at said radio station or at a place duly licensed by society to transmit rendition of such works to said radio station for the purpose of being broadcast therefrom."

We note that on June 7th you broadcast a musical program from the Brass Rail, and inasmuch as they are not yet licensed to publicly perform the musical numbers of the members of this society in their establishment, it is necessary that we ask you to broadcast no further musical programs from that establishment until it carries the license of this society.

We trust that this establishment will immediately secure license in order that your service to them may not be interrupted, and we shall be pleased to notify you immediately on the licensing of this establishment.

Thanking you for your cooperation in the matter.

Very truly yours, American Society of Composers,
Authors and Publishers, (S.) By Hugo B. Anderson,
Resident Counsel.

[fol. 1719] DEFENDANTS' DEPOSITION EXHIBIT D

WIBA Exhibit 1

Telephone Broadway 9080

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
Bartlett Building, 176 W. Wisconsin Ave.,
Milwaukee, Wis.

ASCAP

Counsel for Wisconsin, Robert A. Hess

November 18, 1931

Mr. Tom C. Bowden
Station W-I-B-A,
Madison, Wisconsin.

DEAR SIR:

Our attention is directed to the fact that the Studio Ballroom at Madison, operated by Joe Maes, is broadcasting through Station W-I-B-A.

You are informed that this man has no license from this Society and any pick-up by remote control or otherwise is prohibited where the pick-up is an unlicensed place.

Under the circumstances may I request and respectfully insist that there should be no further infringement on the

1080

part of your Station broadcasting any music emanating from the Studio Ballroom.

Your acknowledgment of this letter will be appreciated.

Yours very truly, American Society of Composers,
Authors & Publishers, (S.) By (Signature illegible), Counsel for Wisconsin.

RAH:ELB

[fol. 1720] DEFENDANTS' DEPOSITION EXHIBIT E

Telephone Riley 1533

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
1214 Circle Tower
Indianapolis, Indiana

Edward O. Snethen, Paul R. Summers
Address All Communications to the Indianapolis Office
Indianapolis, Indiana
ASCAP

General Counsel for Indiana, Kentucky, Minnesota,
North Dakota, South Dakota, N. W. Wisconsin

December 6, 1932

Radio Station K. S. T. P.
Atten: Mr. Stanley Hubbard,
St. Paul, Minn.

Re: K. S. T. P.

DEAR MR. HUBBARD:

Following our notices heretofore, we have reports of infringements on the occasion of December 3, 1932, including the following numbers from the Coliseum: "Love Me Tonight," "You'll Get By with a Twinkle in Your Eye," and "I'm So Ashamed"; and the following from the Marigold Ballroom, Minneapolis, by Wally Erickson's Orchestra: "Night Fall" and "Fit as a Fiddle."

Under our instructions we cannot do other than proceed on these infringements reported unless you arrange to return signed copies of contract license and your accounting thereon. Such return will need to be in this office not later than December 10th.

Please be advised further that the Marigold Ballroom at Minneapolis permitted its contract to be cancelled for non

payment and you are not now permitted to make any broadcasts from that location, pending further notice.

I will thank you for prompt acknowledgment.

Yours very truly, Paul R. Summers, Snethen & Summers.

PRS/AMC

[fol. 1721] DEFENDANTS' DEPOSITION EXHIBIT F

Telephone: Geneva 2618

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
911-921 Metropolitan Bank Building

Minneapolis, Minnesota

Dwain M. Ewing

ASCAP

Counsel for Minnesota, North Dakota, South Dakota,
Northwest Wisconsin

Feb. 1, 1935

Radio Station KSTP
St. Paul, Minn.

GENTLEMEN:

Re: St. Paul Auto Show

Please be advised that the St. Paul Auto Show does not have a license to publicly perform for profit music of this Society. We do not wish to cause you loss of a commercial customer, but we must ask you to refrain from picking up programs for broadcast from this enterprise until further notified.

This notice is given pursuant to Section 4 of your contract.

Very truly yours, Dwain M. Ewing.

DME:LSH

[fol. 1722] DEFENDANTS' DEPOSITION EXHIBIT G

Chickering 4-2540

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
Paramount Building—1501 Broadway
New York City
ASCAP

June 6, 1933

Mr. John G. Cary, Auditor
Central Broadcasting Company,
1002 Brady Street
Davenport, Iowa.

DEAR MR. CARY:

We have yours of the 2nd, inquiring whether we have available a complete list of copyrighted productions, and if so to forward such a copy to your executive offices in Davenport.

No such list -as ever been compiled. We are attempting to compile similar information for our own records and have been at it for a considerable time. o

The numbers run into the millions and new ones are constantly being added. This is without the selections copyrighted by the foreign societies with which we are affiliated, so you can readily see even if there were such a list available it would be so enormous that it would take quite a bit of effort to handle.

However, if there is any information you desire regarding a particular number we will be very glad to furnish same upon request.

Yours very truly, American Society of Composers,
Authors and Publishers, Herman Greenberg.

HG GW

WMB

[fol. 1723] IN UNITED STATES DISTRICT COURT

Findings of Fact and Conclusions of Law—Filed August 5,
1940

This suit having been duly commenced on February 7, 1938, by filing a subpoena and Bill of Complaint in this Court, and personal service of copies thereof having been duly made upon all the Defendants, and the supplemental

and further supplemental Bills of Complaint herein having been duly filed thereafter, and personal service of copies thereof having been duly made upon all the Defendants herein, and this Court having duly granted a temporary injunction on April 5, 1938, and the same having been affirmed by the Supreme Court of the United States April 17, 1939, and this Court having duly granted a further temporary injunction on October 30, 1939, and Defendants having duly filed their answers to said bills on June 21, 1939 and November 15, 1939 respectively, and this case having come on for trial on the 15th, 16th and 17th days of April, 1940, in the District Court of the United States, Northern District of Florida, Gainesville Division, at the Court House thereof in the City of Gainesville, Florida, and Complainants having appeared by Frank J. Wideman, Manley P. Caldwell, (Louis D. Frohlich and Herman Finkelstein, of Counsel), and Defendants having appeared by George Couper Gibbs, Attorney General, (Thomas J. Ellis, Assistant Attorney General, and Lucien H. Boggs, Special Assistant Attorney General, and Andrew W. Bennett of Council), and evidence having been adduced upon the merits of this case and due deliberation having been had, and the Court having filed its opinion, hereby makes the following Findings of Fact and Conclusions of Law:

[fol. 1724]

FINDINGS OF FACT

1. The State of Florida enacted Chapter 17807 General Laws of Florida which became effective June 9, 1937. Said Statute is hereinafter referred to as the "1937 Act." The State of Florida enacted Chapter 19653 which became effective on June 12, 1939. Said Statute is hereinafter referred to as the "1939 Act." Both Statutes are hereinafter referred to collectively as the State Statutes.

2. The plaintiff American Society of Composers, Authors and Publishers, is a voluntary unincorporated association organized in 1914 under the General Associations Law of New York. Its membership consists of a substantial number of persons, firms and corporations who own or control copyrighted vocal or instrumental musical compositions, as authors, composers and publishers. It brings this suit through Gene Buck, its President, who has been duly authorized to bring this suit on behalf of the Society and all its members. Other plaintiffs are certain individuals and

corporations who are members of the Society and are interested in copyrighted musical compositions. They are all citizens of the United States and citizens and residents of States other than Florida.

3. The Attorney General, the Secretary of State, and the Comptroller, all of the State of Florida, as well as the State Attorneys of the fifteen judicial circuits of Florida, all citizens and residents of Florida, are the Defendants.

4. There are approximately 1,425 composers and author members of the American Society of Composers, Authors and Publishers, hereinafter referred to as the Society, in the United States, and 131 publisher-members who constitute the principal music publishers of the country. Each member has assigned to the Society the exclusive right of public performance for profit of his copyrighted musical [fol. 1725] compositions for periods of five years at a time, the present contracts between the Society and its members expiring December 31, 1940. The Society has issued and still does issue only blanket licenses to the users of its copyrights by which such users are permitted publicly to perform at any time all of the musical compositions owned, written or composed by members of the Society without requiring further consent of the owner of the particular composition performed. These blanket licenses include not only the right to perform the works of the members of the Society, but also grant the right to perform the works of some 45,000 members of other similar societies in foreign countries throughout the civilized world, with which foreign societies the Society has exclusive contracts authorizing the Society to grant such licenses. The management of the Society is vested by its Articles of Association exclusively in a self-perpetuating Board of Directors of 24 members consisting of 12 directors representing publisher-members of the Society and 12 directors representing composer and author members. The Board has absolute control over the fixing of prices to be charged for performance licenses, the expenditure of all moneys received, including distribution to members, the admission of composer, authors and publishers to membership, the prosecution of infringements and all other activities engaged in by the Society.

5. At the time the 1937 Act was passed, there were in existence 410 signed contracts between the Society and establishments in the State of Florida engaged in the busi-

ness of publicly performing copyrighted musical compositions for profit. For that year, these licensees paid the Society \$61,347.94 pursuant to such contracts. Among such licensees of the Society were the owners of 188 motion picture theatres, 12 radio broadcasting stations, and 210 hotels, restaurants, dance halls and miscellaneous establishments. Among the 12 radio stations in Florida licensed [fol. 1726] by the Society, six are affiliated with the Columbia Broadcasting System and four with the National Broadcasting Corporation. Part of the programs broadcast by the eleven affiliated stations emanate from points outside of the State and the remaining part initiate in the studios of such Florida broadcasters or elsewhere within the State. There were on January 1, 1939, 308,900 radio receiving sets in private homes in the State of Florida. No license fees are paid by the owners of these receiving sets inasmuch as they do not engage in public performances for profit. In 1937 and 1939 respectively, the Society's net income from motion picture theatres, broadcasting stations, hotels, restaurants, cabarets and miscellaneous establishments in the State of Florida was approximately \$46,623.00 and \$71,316.00. When the 1937 Act was passed, the following annual license fees were paid by users of various types in the State of Florida to the Society as follows:

39 Restaurants paid fees totalling \$3,988.50, such fees ranging from \$15 to \$300 per year, the majority paying less than \$100.

22 Dance halls paid fees totalling \$2,166.00, such fees ranging from \$15 to \$180.

69 Miscellaneous establishments paid fees totalling \$8,671.50 or an average of \$125.

80 Hotels paid fees totalling \$6,580.79 or an average of \$82.

188 Motion picture theatres paid fees totalling \$15,343.71, such fees ranging from \$1.91 to \$463, many paying less than \$25 annually.

The cost of operation of the Society is approximately 20% of the gross amount received.

The Society is given by its members the exclusive right to make collections, fix prices for blanket licenses, and otherwise carry on the licensing of the right of public perform-

ance for profit of all the musical compositions copyrighted by its members. Some \$6,000,000 was received for public performance rights by the Society from such licensing in [fol. 1727] the entire United States during 1938, of which approximately 20% was used to defray all expenses, the balance being distributed among its members. 50% of such net income was divided among the composer and author-members and the other 50% was divided among the publisher-members, in accordance with a method of classification defined in the Articles of Association of the Society.

7. Prior to the organization of the plaintiff Society, authors, composers and publishers who had obtained copyrights for their productions had no practical means of enforcing the exclusive right given them by the Copyright Act. They were not so equipped nor organized to discover violations of their rights, and it would require much time and a large amount of money to detect infringement and to enforce their rights by means of litigation. None of them secured any revenue from the public performance for profit of their copyrighted musical compositions. Users of music, on the other hand, who wished to obtain the rights of public performance for profit, were unable to ascertain who the copyright owner was and to whom to go and could not economically obtain individual licenses for the separate performance of the large numbers of works required by them daily. It was for the purpose of protecting the legal rights of its members in their copyrighted musical compositions against infringement by public performance for profit and to give users ready access to a substantial repertoire of music for such purposes that the Society was organized.

8. The Society and its members, including the other Complainants, come within the purview, and regulative provisions of the state statutes.

9. Complainants are jointly interested in the subject of the action and in obtaining the relief demanded; the questions raised by the Bill of Complaint, the supplemental Bill of Complaint, and further supplemental Bill of Complaint are common and general interest to all the members of the Society who constitute a class so numerous as to make it [fol. 1728] impracticable to bring them before the Court; Complainants herein are suing on their own behalf and on the behalf of all the members of the Society.

10. The value of the matter in dispute herein between Complainants and Defendants is in excess of the sum of \$3,000.00 exclusive of interest and costs.

11. The repertoire of music controlled by the Society is sufficiently diversified and substantial to furnish a comprehensive and instantaneously available reservoir upon which licensees may draw at will. Indeed it is so complete and comprehensive that users of music in the public entertainment industry find it very difficult, if not impossible, to conduct their businesses without a license from the Society.

12. The Society's practice has been to grant blanket licenses to theatres according to their seating capacity, to radio broadcasting stations according to their income, power and coverage, and to hotels, cabarets and dance halls according to their respective size, business done, number and size of orchestras, methods of performance, income and standing. Certain of such users have for many years consistently refused to pay license fees to the Society or its members, until investigations were made by the Society, infringements ascertained and suits brought.

13. The radio broadcasting stations in the State of Florida are members of the National Association of Broadcasters, which association on behalf of its members, for many years last past, has acted and presently acts collectively in dealing with the Society.

14. Under the contracts between the Society and said foreign societies, the latter are not required to, and never have, filed with the Society or with any State Authority, copies of the respective compositions copyrighted by their respective members.

15. Many thousands of the copyrighted musical compositions [fol. 1729] owned and published by Complainants, as well as others similarly situated, have been recorded under the compulsory license provision of Section 1(3) of the Copyright Act by manufacturers of phonograph records, music rolls and electrical transcriptions. Such manufacturers have paid to copyright owners not more than two cents for each record and said copyright owners have no right to demand any further sums from such manufacturers; Complainants and others similarly situated have no control over the sale or disposition of such phonograph records,

music rolls or electrical transcriptions and they cannot compel the manufacturers thereof to affix any price upon them or to collect a price for the public performance for profit thereof, or if collected, to remit or give to them the sums so collected respectively for the public performance for profit thereof.

16. The requirements of Section 2 of the 1939 Act with reference to the disclosure of information concerning the identification and ownership of musical copyrights to be licensed for public performance in the State of Florida are not unreasonable or difficult of compliance.

17. There are a great number of separate performing rights with separate owners of each of such rights. The 1939 Act applies to both dramatico-musical works and musical compositions. A dramatico-musical composition (an opera, operatta or musical comedy) usually includes a great number of separate musical compositions. The entire work is copyrighted as a dramatico-musical composition under Section 5(e) of the Copyright Act and that copyright protects each of the separate musical compositions under Section 3 of the Copyright Act. With respect to compositions included in dramatico-musical works, the Society licenses the performance of separate numbers from such composition when such performances are given in non-dramatic form. The dramatic rights are not granted to the Society. Such rights are usually owned by a number of different persons, each of whom has an interest in the rights of the others. The producer of a musical show owns the stage rights for performances in first class theatres where the play is originally presented and "on the road" where performances are given by so-called "road show companies." The place where the performance may be given is solely within the discretion of the producer, but the price to be paid cannot be fixed without the consent of the author. The stock rights are usually owned by an entirely different person who, together with authors, licenses performances by "stock companies." The amateur dramatic rights are owned by still another person.

18. The rights granted to the publisher and the rights reserved by the composer and author may not be exercised in such a manner as to conflict with the dramatic rights for this reason: It is necessary that the composer, author and

publisher from whom the Society derives its so-called "small performing rights," shall reserve the right to restrict the performance of the musical compositions in good faith, such restrictions usually being made for the purpose of protecting the investment of the producer of a stage show or motion picture in which the separate musical compositions restricted are incorporated. The right to restrict numbers is the most valuable right certain composer- and publisher-members of the Society have. All these rights are constantly being licensed in the State of Florida. In many cases, the publisher has an interest in the dramatic rights and will fix a price for dramatic uses in collaboration with the composer.

19. Complainants and others similarly situated are not willing to permit their musical compositions to be performed within the State of Florida publicly for profit on any basis wherein the price for such performance would be included in the price paid for a copy of the sheet music, phonograph record, music roll, electrical transcription or sound track thereof.

[fol. 1731] 20. The musical compositions of the Society's members and Complainants have been for many years last past, and are presently being performed within the State of Florida in hotels, dance halls, taverns, motion picture theatres and broadcasting stations.

21. Defendants have threatened to and will enforce such States Statutes against these Complainants and others similarly situated in the event that such Complainants and others similarly situated refuse to comply with said State Statutes or do any of the acts made unlawful by said State Statutes.

CONCLUSIONS OF LAW

1. The 1937 Statute is not a reasonable exercise of the police power of the State of Florida, and the penalties and confiscatory provisions provided for therein are not reasonably necessary to meet any alleged evil; enactment of the said Statute was not necessary to protect, nor does it serve the public interest of the State of Florida; the object, purpose and effect of the said Statute is to take the copy-righted musical compositions of the Complainants, and others similarly situated, for a private purpose, to wit:

to benefit the 410 users within the State of Florida; the said Statute discriminates against, and in fact, confiscates the Complainants' copyrighted musical compositions as well as those of others similarly situated; it is contrary to and hinders carrying out the purpose of Article 1, Section 8 of the Constitution of the United States, and will deter composers, authors and publishers from securing copyright registration of their works.

2. The 1937 Statute is an invasion of Complainants' constitutional rights in the following respects:

(a) It interferes with and destroys the patterns of the Copyright Law by which Congress has endeavored to carry out the purpose of the Constitution to insure uniformity [fol. 1732] and certainty in the field of copyright.

(b) It denies to Complainants equal protection of the laws, and by making them presumptively guilty of the criminal provisions therein deny to the Complainants due process of law.

3. Complainants have no adequate remedy at law and are relievable only in this Court of Equity, and if Complainants are not afforded the equitable relief prayed for in the Bill of Complaint and supplemental Bills of Complaint, but are required to resist, when criminal prosecutions and other suits or proceedings are instituted under said State Statutes, it will result in such a multiplicity of suits and entail such delay and so jeopardize and injure Complainants in their persons and property as to make the remedy at law grossly inadequate, and unless an injunctive order is issued Complainants will be irreparably damaged.

4. Complainants are entitled to an injunction perpetually enjoining and restraining the Defendants and each of them individually and in their capacity as officials of the State of Florida, charged by said State Statute with the enforcement of the provisions thereof, from bringing directly or indirectly any proceeding at law or in equity for the purpose of enforcing said State Statute against the Complainants and others similarly situated, their representatives, employees, agents or any of them, and from interfering with all existing contracts entered into by the Complainants and others, including the Society and citizens and

residents of the State of Florida, and from threatening to enforce against any citizen or resident of the State of Florida the penalties of said State Statute, in the event such citizens and residents desire to carry out their contracts with the American Society of Composers, Authors and Publishers, or Complainants, or others similarly situated, and from prosecuting criminally the Complainants, their representatives or agents or any of them or others [fol. 1733] similarly situated for doing any act or thing to detect infringements and to enforce their respective rights under the Copyright Act in the Federal Court of the State of Florida or elsewhere, and generally from doing any act or thing to carry out or enforce any of the provisions of said State Statutes.

5. The said Statute constitutes an attempt to restrict and to regulate the right of Complainants to the full enjoyment of the exclusive rights granted them by the laws of the United States, generally known as the Copyright Laws.

6. The Court has jurisdiction of this suit.

7. The 1939 Act, based as it is upon the purpose to compel disclosure as to the ownership of copyrighted composition is, except as to Section 4-a and Section 4-c, which are not germane to the purpose of the act, for the reasons set out in the opinion, a valid exercise of the police power of the state. Sections 4-a and 4-c of that act are, for the reasons set out in the opinion, invalid as an arbitrary interference with liberty of contract and with the rights granted under the copyright laws. Complainants should have their decree, making the temporary injunction awarded on April 5, 1938, against the 1937 Act, permanent and perpetual and the temporary injunction awarded them October 30, 1939, against the enforcement of the 1939 Act, modified and made permanent and perpetual as to Sections 4-a and 4-c, of that Act. As to the balance of the 1939 Act, the decree should deny plaintiffs the injunction prayed.

Let decree be entered accordingly.

Dated, August 5, 1940.

By the Court: J. C. Hutcheson, Jr., U. S. Circuit Judge; Augustine V. Long, U. S. District Judge; William J. Barker, U. S. District Judge.

[fol. 1734] IN UNITED STATES DISTRICT COURT IN AND FOR
THE NORTHERN DISTRICT OF FLORIDA, GAINESVILLE DIVISION

Equity No. 12.

GENE BUCK, Individually and as President of the American
Society of Composers, Authors and Publishers, et al.,
Plaintiffs,

VS.

GEORGE COUPER GIBBS, Individually and as Attorney Gen-
eral of the State of Florida, et al., Defendants

Before Hutcheson, Circuit Judge, and Long and Barker,
District Judges

OPINION—Filed August 5, 1940

HUTCHESON, Circuit Judge:

Plaintiffs are owners of musical copyrights or rights of renewal therein, which have been pooled with the American Society of Composers, Authors and Publishers, hereafter called ASCAP. Defendants are the state officers charged with enforcement of the two statutes the suit brings in question. As originally brought, the suit was to enjoin the enforcement of Chap. 17,807, Laws of Florida, 1937¹. There

¹ 1937 Act, Chapter 17807.

Section 1 prohibits combinations of authors, composers, publishers, owners of copyrighted vocal or instrumental musical compositions from forming any society, association, partnership, corporation or other group or entity, when the members therein constitute a substantial number of those owning or controlling copyrighted vocal or instrumental musical compositions and when one of the objects of such combination is the determination and fixation of license fees, required by such combination for any use or rendition of copyrighted vocal or instrumental musical compositions for private or public performance for profit, declares the association so formed unlawful, prohibits the collection of license fees so fixed and makes persons collecting or attempting to collect them subject to the penalties of the Act.

Section 2-A requires selling prices to be stated on sheet music or records and gives purchaser general public per-

was a temporary injunction, an appeal and an affirmance.² [fol. 1735] After the enactment of Chapter 19653, Florida Laws, 1939,³ it was extended by a supplemental bill to include that chapter in its scope and to obtain injunctive relief, temporary and permanent as to it.

[fol. 1736] The claim of the original and supplemental formance rights to use for all purposes on paying such price.

Section 2-B provides if selling price not so fixed, purchaser of the composition may use the composition privately or publicly without further license fee and exempts such purchaser from accountability to the copyright owner.

Section 2-C declares against purpose to give a purchaser general right to resell or distribute; or to prevent copyright holders from determining prices not in combinations forbidden in Section 1.

Section 3 declares void existing contracts contrary to the Act and makes their attempted enforcement illegal.

Section 4-A—Relieves Florida broadcasting stations from payment of licensee fee for re-broadcast of copyrighted music controlled by a combination prohibited by Section 1.

Section 4-B—Similarly forbids collection by out-side station of license fees to unlawful combination.

Sections 5-A and 5-B—Counterparts of Section 4-A and 4-B, except relating to theatres, etc.

Section 6—Concerning music broadcast or emanating from without the state, makes outside source of emanation solely liable for compensation to copyright owner and deprives owner of right to collect from Florida user.

Section 7-A—Provides for service of process on agent of outside combination.

Section 7-B—Declares such an agent a part of the combination for which he acts and as such, subject to all the penalties of the Act.

Section 8—Penalty clause for violation of Act.

Section 9—Confers jurisdiction on circuit courts and designates state attorneys under Attorney General to enforce public rights and penal provisions, particularly to dissolve unlawful combinations and otherwise enforce Section 1.

Section 10-A and 10-B—Confers jurisdiction on circuit courts in private suits under the Act.

Section 11-A and 11-B—Provides for discovery of docu-

bills in general was: that the statutes were confessedly aimed as ASCAP and its constituent members and were class legislation of the most indefensible kind and that in addition to violating the equal protection, liberty of con-

mentary evidence and penalty for failure to produce same.

Section 12—Severability clause.

Section 13—Makes act and rights thereunder cumulative to rights and remedies under existing law.

Section 14—Effective date. (Approved and effective June 9, 1937).

² Gibbs v. Buck, 307 U. S. 66.

³ 1939 Act, Chapter 19653.

Section 1. Definitions. Defines blanket license as including any device whereby public performance for profit is authorized of the combined copyright of two or more owners. The term blanket royalty or fee includes any device whereby prices for performing rights are not based on the public performance of individual copyrights.

Section 2. (Disclosure section). Requires seller of public performance rights in copyrighted music to file with Comptroller a list showing name and title of composition, date and number of copyright, names of author, publisher and present owner and owner of performance rights, with provision for filing additional lists and filing fee of two cents per composition; also for filing affidavit describing rights intended to be sold and verifying the statements in the listing or registration, with name, agent, occupation, residence and authority of affiant.

Section 3. Makes such lists available for public inspection and taking copies "in order that any user * * * may be fully advised concerning the performing rights * * * and avoid being overreached * * * and avoid committing innocent infringement." Comptroller may publish lists and must give certified copies and anyone selling, licensing or otherwise disposing of performing rights, must exhibit them.

Section 4-A. Makes it unlawful "for two or more owners" of musical or dramatics musical copyrights to associate or combine together for purposes of issuing blanket public performance licenses upon a blanket royalty or fee unless each owner or such combination shall make available to each user of such composition within the state the right to perform each at a price established for each separate performance by filing with the Comptroller either as part of

tract and due process, Clauses of the Fourteenth Amendment, they violated various other constitutional provisions, Federal ⁴ and State.⁵

[fol. 1737] In particular the claim as to ASCAP was that

the list under Section 2 or separately a schedule of prices for the performing rights to each separate performance with affidavit that such price was fixed by the copyright owner alone and not in combination with other owners—with provision for reasonable classification by uses if without unreasonable discrimination; and for filing new schedules at any time effective seven days from filing, and for public inspection of publication of schedules.

Section 4-B. Provides any person issuing a blanket license shall file verified copies of blanket performance license with Comptroller within thirty days after issuance and fixes filing fee.

Section 4-C. Prohibits the sale or license of performing rights to any musical composition for a compensation based "in whole or in part on any program not containing any such composition," and makes illegal and invalid any charge for compensation so based.

Section 4-D. Makes sale of public performance rights or collection of compensation unlawful if composition not listed as provided in Section 2.

Section 5. Performing rights owner must authorize Secretary of State to accept service of process and copy shall be mailed him by Secretary.

Section 6. No action to be brought without prior compliance with Act. Comptroller to furnish copies of any papers at same fees as clerk of circuit court.

Section 7. Imposes three per cent tax on gross receipts, provides for annual tax return, inspection and audit of books by Comptroller and provides for means of collection.

Section 8. Makes unlawful public performance of compositions without authority of owner if he has complied with the statute.

Section 9. Makes violations misdemeanors under general law.

Section 10. Makes agents of owners subject to the statute.

Section 11. Confers on circuit courts jurisdiction or private suits.

Section 12. Confers on circuit courts jurisdiction of enforcement of public rights by state attorneys under Attor-

it had been organized not to increase, or obtain unfair, prices for the performing rights of copyrighted musical compositions, but to protect authors, owners and publishers from the systematic piracy of their performing rights which, acting alone, they were powerless to prevent. And there was the further claim as to it that by fair and reasonable contracts and arrangements, it had, at the same time, afforded full public use of and access to copyrighted musical compositions at fair and reasonable prices, and secured to copyright owners, the benefits of the copyright law. While the claim as to the statutes in question was that they had been enacted, not in response to a public need, to make effective the general will of the people of Florida, but at the instigation of an organized group or band of radio broadcasters and other users of music in order that, the association stricken down and outlawed in Florida, they might with

ney General upon complaint of a person aggrieved.

Section 13. If prosecuting officers fail to act, aggrieved party may bring such civil action as state officers might have brought.

Section 14. Appropriates taxes above expenses to general revenue fund.

Section 15. Supersedes inconsistent laws with express saving clause as to prior lawful contracts and "any of the statutes of Florida pertaining to monopoly or restraint of trade" including but not limiting the generalities of the foregoing sections 1, 2-C, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13 and 14-C, Chap. 17807, Laws of Florida, 1937. Provides for filing copies of existing contracts within thirty days and for compliance otherwise with Act within thirty days.

Section 16. Severability clause.

Section 17. Effective date. (Filed and effective June 12, 1939).

⁴ The Copyright Clause (Art 1, Sec. 8, Cl. 8) and the Federal Laws enacted pursuant thereto; the Impairment of Contract Clause (Art. 1, Sec. 10); the Privileges and Immunities Clause (Art. 4, Sec. 2); the Interstate Commerce Clause (Art. 1, Sec. 8, Cl. 3).

⁵ The Privilege against self-incrimination (Sec. 12, Declaration of Rights); the Prohibition of cruel and unusual punishment (Sec. 8, Declaration of Rights); the Equal Protection and Liberty of Contract Clauses (Sec. 1, Declaration of Rights).

complete impunity, again pirate the performing rights to copyrighted musical compositions without making payment to the owners therefor. As to the 1937 statute, the claim in general was that, though put forward as an antimonopoly statute, it was really a statute designed and enacted, in the interest and at the behest of this anti-copyrighted group, to deprive the members of the society of the protection, in Florida, of the copyright laws. In particular it was that, by at once outlawing ASCAP and providing for the performance, without compensation to them, of the copyrighted vocal or instrumental musical compositions of its members, the statute undertook in effect to nullify the copyright laws and to take plaintiffs properties in their copyrighted compositions without compensation and without due process.

[fol. 1738] As to the 1939 statute, the claim was that its rigorous provisions for registration, its prohibitions against and restriction on blanket licensing, its prohibitions against collection of compensation when based in whole or in part on any program not containing such composition and its general provisions for filing fees, taxes, etc., are so in derogation of the rights of owners under the copyright law, and so onerous that they amount to an illegal taking for private use, that is, for the benefit of broadcasters and other users, of plaintiffs' rights in and under their copyrights.

The defense in general was a denial that the legislation was oppressively or partisanly conceived and that it operated in violation of any constitutional protection, and an assertion that it aimed at and constitutionally reached the evils of a combination to fix prices and in restraint of trade. A combination, organized and operating to fix the prices to be paid for, and to restrain freedom of trade in, the public performance of individual copyrighted musical compositions at a fair price per use, by blanketing them together under general licenses covering many compositions of many owners, authors and composers, and refusing to license or permit the licensing individually and per use of particular compositions. In particular the defense as to the 1937 Act was: that it was an anti-monopoly Act and that taken as such it was valid; that sections 2-A and 2-B and 6, which purport to authorize the performance within the state of copyrighted musical compositions without payment by the users therefor, have been repealed by the 1939 Act; and that

the remaining sections are valid and the Act as to them must stand as an anti-monopoly Act condemning and making illegal, combinations like those of ASCAP and the other plaintiffs.

[fol. 1739] As to the 1939 Act, the defense was: that it is in general an Act for disclosure, and as such, is valid under *Allen v. Riley*, 203 U. S. 347; and that its other provisions requiring blanket licenses by two or more persons and prohibiting sales or licenses at a price, based other than on a use in a program of the particular music sold or licenses, are mere regulatory measures to reach and do away with the evils of blanket licensing in all its forms.

With their contentions thus put forward, plaintiffs and defendants ring the changes on their respective arguments. Plaintiffs urge upon us that ASCAP is a beneficial, defendants that it is an evil institution; plaintiffs that the copyright laws protect them from the legislation; defendants that copyright owners may not, any more than others, form combinations to monopolize or restrain trade. If the case were as simple in its issues as each contender thinks it is, if it turned, on the one hand, simply on whether plaintiffs had rights and, on the other, as simply on whether these rights were subject to regulation, we could and would end it quite simply by saying to defendants, "The plaintiffs certainly do have rights in their copyrighted musical compositions," and to plaintiffs, "These rights are certainly not beyond reasonable state regulation."

But, the answer to the questions the suit raises is not so simply found. For conceding both plaintiffs rights and the State's power to subject them to reasonable regulation, the difficulty remains of determining whether the statutes in question are unreasonable prohibitions masking under the guise of regulation, or if regulations, whether, unduly and beyond the legitimate purpose to be served, they hamper and restrict plaintiffs' undoubted rights. In short the question for decision comes down at last to, and is to be decided by, not a general statement of principles, for as to them there is no real dispute,⁶ but a construction and interpre-

⁶ They are sufficiently stated for our purpose in *Buck v. Swanson*, — Fed. (2d) —, dealing with a Nebraska statute of the same purport as the Fla. 1937 Act, and we need not restate them here. Other authorities not cited in Buck's case, which may be consulted are: For the plaintiffs:

tation of the statutes under attack, as to what they purport [fol. 1740] to do and whether they may constitutionally do that.

Both plaintiffs and defendants see plainly enough that this is so and by an analysis both of the statutes as a whole and of each section thereof, plaintiffs undertake to show their invalidity, defendants their validity. Plaintiffs pointing to the confiscatory provisions of Sections 2-A, 2-B, 4-A, 4-B, 5-A, 5-B and 6, by which the 1937 Act undertakes to permit performance, in Florida, of copyrighted music without compensation, urge upon us that not only these sections but the statute as a whole is invalid because, not a reasonable regulation of, but a repressive prohibition of, dealings in copyrighted music, it breathes and attempts to make effective throughout the unconstitutional spirit of repression and reprisal. Outlawing ASCAP and those in association with it, and expropriating their property for the use, without compensation, of radio broadcasters and others, if they say in violation of every constitutional principle, operates as a kind of Bill of Attainder.

Defendants concede the invalidity of Sections 2-A, 2-B and 6. Indeed at one stage of the proceedings before us they offered to submit to a permanent injunction as to them. They insist, however, that the vice of these sections is peculiar and confined to them and does not pervade the Act, and that because this is so and particularly because the Act

Lawton v. Steele, 152 U. S. 133; Hale v. Bunco, 306 U. S. 363; State ex rel Fulton v. Ives, 167 So. 394; Peoples Petroleum Producers v. Sterling, 60 Fed. (2d) at 1047; McLeish v. Binford, 52 Fed. (2d) 151; Wolff v. Industrial, 262 U. S. at 539; Smith v. St. Louis S. W., 181 U. S. at 255; McFarland v. American Sugar Refining Co. 241 U. S. 79; Herbert v. Shanley, 242 U. S. 591; Buck v. Jewell, 283 U. S. 191; Remick v. American Automobile, 5 Fed. (2d) 411.

For the defendants: Allen v. Riley, 203 U. S. 347; Fox Film Corp. v. Boyal, 286 U. S. 123; Carbice Corp. v. Amer. Patents Corp. 283 U. S. 27; Straus v. Amer. Publishers Assn. 231 U. S. 222; Interstate Circuit v. U. S. 306 U. S. 208; Strassheim v. Daily, 221 U. S. 280; Ford v. U. S., 273 U. S. 593; Stephenson v. Binford, 287 U. S. 251; Ethyl Gasoline Corp. v. U. S., 60 Sup. Ct. 618-625; Tigner v. State, 84 L. Ed., 756; U. S. v. Socony, 84 L. Ed. 760.

For both: Standard Oil Co. v. U. S., 283 U. S. 163.

contains a separability clause, Sec. 12, and because, in the reference in the 1939 Act to sections of the 1937 Act as unrepealed, these sections were not included, these invalid sections should, by a kind of judicial surgery, be excised from the Act, leaving it to stand in its other provisions as an anti-monopoly statute.

[fol. 1741] We do not think so. In complete agreement with what was said in Buck's case as to the invalidity of Sections 2-A and 2-B, of the Nebraska Law, we find invalid the similar sections of the Florida 1937 Law. For the same reasons, that they unreasonably interfere with and in effect deprive the owners of their copyright protection, by imposing unlawful conditions, in effect a servitude, in favor of those desiring to use them, upon the performing rights in their copyrighted musical compositions, and even under named conditions completely take the copyright, by permitting use without compensation, we find Sections 3, 4-A, 4-B, 5-A, 5-B and 6, also invalid.

There remain: Sections 1, 2-C and 3, in effect declaring ASCAP and similar societies illegal associations, outlawing its arrangements for license fees, and proscribing and making an offense, attempts to collect them; Section 7-B making persons, acting for such a combination; agents for it and liable to the penalties of the Act; Section 8 fixing the penalties; Section 9 giving the state courts jurisdiction to enforce the Act, civilly and criminally and Sections 10-A, 10-B, 11-A and 11-B, prescribing procedure under it.

It is, of course, the duty of a Court, if reasonably possible, consistent with the protection of constitutional rights, to receive all doubts as to the validity of a statute in favor of its constitutionality, sustaining it, if it can be done as a whole, or if that cannot be done, as to the part of it that is constitutional. But legislation, even though containing a separability clause, is not of the isolated sections in it, but of the law as a whole, and the function of the Court, if there are invalid sections in a statute, is to search out, not isolated valid ones, but the valid law as a whole. To do this, a Court may, especially where the Act contains a separability clause, cut and pare and trim away its diseased parts, if, when this has been done, the live spirit of the law as enacted still remains, the living tree still stands. But, law making at last is a legislative and not a judicial function and the search of the Court in the end is not for a law the legislature could or might have validly enacted but for the

[fol. 1742] valid law it did enact. When, therefore, the vice of a statute runs through the whole of it, Courts may not by lopping and paring away create a statute which the structure and context of the Act as a whole shows the legislature did not intend to, indeed did not, enact. *Williams v. Standard Oil Co.*, 271 U. S. 241; *Sage v. Baldwin*, 55 Fed. (2d) 97, and cited cases. Looked at in this light when the whole purpose of the 1937 Act to outlaw ASCAP and its contracts and to permit users in Florida to perform compositions, dealt with in them, without pay, is kept in mind, we think it clear that the Act, in spite of its separability provision, is so far indivisible that with all the "without pay" sections stricken as invalid, the whole Act must fall. For, it may not be supposed that the legislature intended to strike down the contracts and leave both ASCAP and its members, and the users in Florida who had been dealing with ASCAP, up in the air, with contracts already entered into and a considerable part of the compensation already paid, with no right in ASCAP or its members to collect the balance due, and none in the Florida users, without paying again under separate arrangements, to use the music they had contracted and partly paid for. We, therefore, conclude as the Court did in *Buck v. Swanson*, *supra*, that the whole Act is invalid and must fall. We are the more inclined to this view because of the inconsistent provisions in the 1939 Act, and because, while specifically providing that nothing in it shall be construed to repeal any of the statutes of the state of Florida, pertaining to monopoly or restraint of trade "including Sections 1, 2-C, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13 and 14 of Chapter 17807, Laws of Florida, 1937," that Act by grouping all of these sections together makes it clear that they are regarded by the legislature as forming a harmonious whole and not as isolated and independent separate laws and as a whole they must stand or fall together. In this view it is not necessary for us to determine whether as plaintiffs claim, Section 1 is invalid, for indefiniteness and uncertainty in its provision that it shall apply to combinations only where "a substantial number" of owners are concerned, nor is it necessary to determine whether defend- [fol. 1743] ants are right in their counter to this claim of plaintiffs, that if the statute might be regarded as indefinite in its application as to some, it is certainly not so in its application to plaintiffs, for they admit that they own or control substantially all of the playable copyrighted musical

compositions, and they may complain of the statute, not as it applies to others but only as it applies to themselves.

When it comes, however, to the 1939 Act we think the matter stands differently, for having a valid purpose to compel disclosure to protect music users against imposition in the matter of copyrighted music and, except as to Sections 4-A and 4-C, which are not germane to that purpose, having gone about effecting that purpose in a reasonable way, the Act as a whole is valid and may stand with those sections stricken from it. These sections constitute clear invasions of plaintiffs' rights under federal laws for which no warrant or justification can be found in the exercise of the state's police power. They may not stand.

As to 4-A, it seriously invades the rights of copyright owners to sell or license or refuse to sell or license as they please, and by its compulsion, opens to the public the unlimited right to use copyrighted material upon terms the owner must fix generally in advance, and under conditions which are not only unreasonable in fact but are in their nature beyond the power of the state to impose. A copyright owner has a right to sell or withhold from sale the matter of, and the rights under the copyright. He cannot be made to sell his product unless he wishes to. He can make one price to one user and an entirely different price to another. The effort of this section is to compel copyright owners, if they sell to one by a blanket license, to furnish schedules giving prices of the compositions so licensed, and to permit anyone desiring to do so, to perform any piece at the price so fixed. This is a taking of plaintiffs' property in its copyright without due process, and is beyond the power of the state.

[fol. 1744] The defendants seem to recognize that this would be so if the condemned provision were not coupled in the statute with a provision permitting dealing in copyrighted music under blanket licenses. They seem to think that the permission of the statute for two or more owners to combine in a blanket license authorizes the state to impose unreasonable restrictions upon that joining.

This will not at all do. It is not unlawful for one or more copyright owners, merely to pool their compositions for one royalty for them as pooled. *Standard Oil Co. v. United States*, 283 U. S. 263. Section 4-A does not concern itself with price fixing or with combinations for price fixing; it deals only with the Act of pooling copyrighted pieces to

sell them for one royalty, that is, with the selling of two or more pieces under one license. There is no conceivable public policy against such action by two or more owners and therefore no valid exercise of police power involved in a statute putting limitations on such trading. So long as persons do not unlawfully combine to fix prices, and the section in question does not deal with such unlawful combinations, there is no offense in mere pooling. And the mere fact that the statute permits to be done what without the statute it was already lawful to do does not authorize it to impose unconstitutional restrictions upon that doing. "But a state may not impose any condition which requires the relinquishment of a right guaranteed by the constitution." *Sage v. Baldwin*, 55 Fed. (2d) at 969. The copyright laws guarantee to owners of musical compositions protection against the use thereof without their consent. The state of Florida may not, therefore, as a condition to their being allowed to sell in Florida, a right they already have under the Federal constitution and laws, compel them to throw open to general public use the performing rights to their compositions at a price fixed in advance.

Section 4-C is for the same reason invalid. It undertakes to impose unreasonable restrictions on copyright owners, restrictions having no reasonable relation to the public policy the Act is designed to further, that of disclosure for the protection of the public against fraud and imposition. [fol. 1745] In attempting to prevent individuals from contracting for the use of their copyrighted music upon any price bases they and their customers may select, the Act goes clearly beyond and is wholly outside the reasonable exercise of the police power. *People's Petroleum v. Sterling*, note 6 supra. The prohibition of the section against basing the price upon programs in which a particular piece of music is not performed is a completely arbitrary one and as such, it could not stand if the subject of the prohibition were uses unprotected by copyright. For, the end and aim of the prohibition is to limit the right to sell or license copyrighted musical compositions to contracts bases solely upon performances per piece of each particular piece of music and to prohibit contracts arrived at on any other basis, however, reasonable and well adapted to the needs of and acceptable in the business generally, of selling and licensing performing rights in copyrighted musical compositions. If the statute dealt with contracts for the hiring of,

work and labor, or personal services, of animals or things and by its prohibition prevented, wages and salaries from being fixed except on the basis of piece work, the hire of horse, car or boat from being fixed, except upon the basis of each particular use, or journey, we think it would be admitted that such a statute would be invalid as an invasion of the right and liberty of contract, and not at all a reasonable exercise of the police power of the state. Certainly the state is in no better, the owner of a copyright in no worse position as to rights protected by copyright, "While the copyright Act may not enhance the right of proprietorship, it certainly does not lessen that right. As said by the Supreme Court in *Caliga v. Inter Ocean Newspaper Co.*, 215 U. S. 182, 'The statute created a new property right, giving to the author, after publication, the exclusive right to multiply copies for a limited period.'

"The right of an author in his intellectual production is similar to any other personal property right. It is assignable and it may be sold and transferred in its entirety, or a limited interest therein, less than the whole property, [fol. 1746] may be sold and assigned, and the various rights included in the entire ownership may be split up and assigned to different persons. Sales may be absolute or conditional and they may be with or without qualifications, limitations or restrictions. *Atlantic Monthly Co. v. Post Pub. Co.* (D. C. Mass.) 27 Fed. (2d) 556; *American Tobacco Co. v. Werckmeister*, 207 U. S. 284;" *Buck v. Swanson*, note 6 supra.

For the reasons herein stated, the injunction prayed for will be granted against the enforcement of the 1937 Act and as to Sections 4-A and 4-C in the 1939 Act; as to the remainder of the 1939 Act, it will be denied.

(S.) J. C. Hutcheson, Jr., U. S. Circuit Judge; (S.) Augustine V. Long, U. S. District Judge; (S.) William J. Barker, U. S. District Judge.

[fol. 1747] IN UNITED STATES DISTRICT COURT
FINAL DECREE—Filed August 5, 1940

This cause came on to be heard at this term, under Section 380, Title 28, U. S. C. A. (Jud. Code Sec. 266) on the 15th, 16th and 17th days of April, 1940, and the Court sat as pro-

vided therein; and the cause was tried and testimony taken and argument heard; thereupon, the Court having made its Findings of Fact and Conclusions of Law, upon consideration thereof, it is Ordered, Adjudged and Decreed, as follows, viz.:

1. The temporary injunction order awarded herein on April 5, 1938, against enforcement of the 1937 Act, be and the same hereby is made permanent and perpetual.

2. The temporary injunction order awarded against the enforcement of the 1939 Act, be and the same is hereby vacated and dissolved as to the whole act and all of its sections except Sections 4-a and 4-c, and as to these sections, the order is made permanent and perpetual.

3. That Defendants George Couper Gibbs, individually and as Attorney General of the State of Florida; R. A. Gray, individually and as Secretary of the State of Florida; J. M. Lee, individually and as Comptroller of the State of Florida; E. Dixie Beggs, Jr., individually and as State Attorney for the First Judicial Circuit of Florida; O. C. Parker, Jr., individually as State Attorney for the Second Judicial Circuit of Florida; A. K. Black, individually and as State Attorney for the Third Judicial Circuit of Florida; William A. Hallows, individually and as State Attorney for the Fourth Judicial Circuit of Florida; J. W. [fol. 1748] Hunter, individually and as State Attorney for the Fifth Judicial Circuit of Florida; Chester B. McMullen, individually and as State Attorney for the Sixth Judicial Circuit of Florida; Murray Sams, individually and as State Attorney for the Seventh Judicial Circuit of Florida; T. E. Duncan, individually and as State Attorney for the Eighth Judicial Circuit of Florida; Murray W. Overstreet, individually and as State Attorney for the Ninth Judicial Circuit of Florida; L. Grady Burton, individually and as State Attorney for the Tenth Judicial Circuit of Florida; G. A. Worley, individually and as State Attorney for the Eleventh Judicial Circuit of Florida; Clyde H. Wilson, individually and as State Attorney for the Twelfth Judicial Circuit of Florida; J. Rex Farrior, individually and as State Attorney for the Thirteenth Judicial Circuit of Florida; L. D. McRae, individually and as State Attorney for the Fourteenth Judicial Circuit of Florida; Phil O'Connell individually and as State Attorney for the Fifteenth Judicial Circuit of Florida, and the respective agents, servants and employees of each

of them, and all other persons acting under or through the authority of each of them or by virtue of the authority of the office of each of them, be and they are, each of them, severally, enjoined and restrained permanently from bringing directly or indirectly, and from permitting to be brought, directly or indirectly, any proceeding at law or in equity, for the purpose of enforcing or executing the Statute of Florida, known as Chapter 17807, Laws of Florida, 1937, enacted June 9, 1937, and Secs. 4-a and 4-c, of Chapter 19653, Laws of Florida, 1939, enacted June 12, 1939, against the Complainants and others similarly situated, their representatives employees, agents or any of them, and from threatening to enforce against any citizens or residents of the State of Florida the penalties of the 1937 State Statutes, or those of the 1939 Act for violation of Sections 4-a and 4-c, and from prosecuting criminally the Complainants, their representatives, or agents, or any of them or others similarly situated, under the 1937 State Statutes or Sections 4-a and 4-c of the 1939 Act, for doing any legal act to enforce their respective rights under the Copyright Act in the Federal Courts of the State of Florida, or elsewhere, and generally from doing any act or thing to carry out or enforce any of the provisions of the 1937 State Statute or Sections 4-a and 4-c of the 1939 Statute.

4. Cost to be taxed against defendants.

Dated August 5th, 1940.

By the Court: J. C. Hutcheson, Jr., U. S. Circuit Judge; Augustine V. Long, U. S. District Judge; William J. Barker, U. S. District Judge.

[fol. 1750] IN UNITED STATES DISTRICT COURT

DEFENDANTS' PETITION FOR APPEAL—Filed November 2, 1940

To the Honorable Judges of the United States District Court, Northern District of Florida:

The above named defendants, considering themselves aggrieved by the Final Decree made and entered herein August 5, 1940, do hereby appeal from said decree to the United States Supreme Court, for the reasons specified in the Assignment of Errors filed herewith.

Wherefore, defendants pray that this appeal may be allowed, that citation be issued as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated may be sent to the United States Supreme Court.

George Couper Gibbs, Attorney General; Tyrus A. Norwood, Assistant Attorney General; Lucien H. Boggs, Jacksonville, Florida; Andrew W. Bennett, Washington, D. C., Solicitors for Defendants.

[fol. 1751] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed November 2, 1940

Defendants in the above entitled cause file the following assignments of error upon which they will rely in the prosecution of their appeal from the Final Decree made and entered in this cause August 5, 1940:

I

The Court erred in failing and refusing on defendants' motion to dismiss the original Bill of Complaint herein for want of equity, on the ground that the pertinent sections of Chapter 17807, Laws of Florida, 1939, are valid statutory enactments.

II

The Court erred in failing to hold that the defendants were only charged with the duty of enforcing Section 1 of Chapter 17807, Laws of Florida, 1937, and the sections dependent thereon; viz., sections 3, 4-A, 4-B, 5-A, 5-B, 7-A, 7-B, 8 and 9; that said sections are valid enactments under the police powers of the State of Florida and that the re-[fol. 1752] maining sections of said Act are without the scope of this suit.

III

That the Court erred in not finding and holding that Section 1 of Chapter 17807, Laws of Florida, 1937, and the sections dependent thereon; viz., sections 3, 4-A, 4-B, 5-A, 5-B, 7-A, 7-B, 8 and 9 were valid despite the fact that the

Court held that the remaining sections of said Act were unconstitutional and void.

IV

The Court erred in finding and holding that the provisions of Chapter 17807, Laws of Florida, 1937, were not severable and holding the entire Act bad because it found that Sections 2-A, 2-B, 3, 4-A, 4-B, 5-A, 5-B and 6 were invalid and unconstitutional.

V

The Court erred in declaring unconstitutional and void Section 1 of Chapter 17807, Laws of Florida, 1937, on the ground that other sections of the Act were unconstitutional.

VI

The Court erred in not holding and finding that section 1 and the other sections of the Act not specifically found to be unconstitutional were constitutional and valid despite the Court's holding that other sections of the Act were unconstitutional and void.

VII

The Court erred in failing to find and hold that the plaintiffs were a monopolistic combination engaged in price fixing activities and not entitled to injunctive aid in further-[fol. 1753] ance of these activities.

VIII

The Court erred in failing and refusing to adjudge that Sections 2-A, 2-B and 6 of Chapter 17807, Laws of Florida, 1937, were repealed by Chapter 19653, Laws of Florida, 1939.

IX

The Court erred in refusing to adjudge that all questions as to the constitutionality of Sections 2-A, 2-B, and 6 of Chapter 17807, Laws of Florida, 1937, were moot inasmuch as the defendant state officers had no duties to perform with respect to said sections, or any of them.

X

The Court erred in failing and refusing to give effect to the separability clause in Chapter 17807, Laws of Florida, 1937.

XI

The Court erred in holding that Section 4-A of Chapter 19653, Laws of Florida, 1939 was invalid and unconstitutional.

XII

The Court erred in holding that Section 4-C of Chapter 19653, Laws of Florida, 1939 was invalid and unconstitutional.

XIII

The Court erred in failing to recognize that Section 4-A of Chapter 19653, Laws of Florida 1939, does not attempt to interfere with the right of the individual copyright owner [fol. 1754] to license or refuse to license public performance rights in his copyrights as he may see fit, but merely regulates the terms under which combinations of two or more copyright owners may pool their copyrights for blanket licensing.

XIV

The Court erred in holding that Section 4-C of Chapter 19653, Laws of Florida 1939 was outside the reasonable exercise of the police power in that said section was enacted in the public welfare because designed to promote the liberal use of music for public, cultural and entertainment purposes, without the limitations imposed by the enforced payment of a percentage of the gross receipts of such entertainment industries.

XV

The Court erred in making permanent the temporary injunction against enforcement of Chapter 17807, Laws of Florida 1937.

XVI

The Court erred in making permanent the temporary injunction against Sections 4-A and 4-C of Chapter 19653, Laws of Florida, 1939.

George Couper Gibbs, Attorney General; Tyrus A. Norwood, Assistant Attorney General; Lucien H. Boggs, Andrew W. Bennett.

[fol. 1797] IN UNITED STATES DISTRICT COURT, NORTHERN
DISTRICT OF FLORIDA, GAINESVILLE DIVISION

No. 12

GENE BUCK, individually and as President of the American
Society of Composers, Authors and Publishers, etc. et al.,
Plaintiffs,

v.

GEORGE COUPER GIBBS, individually and as Attorney General
of the State of Florida, et al., Defendants

ORDER ALLOWING DEFENDANTS' APPEAL—Filed November
2, 1940

This day came the defendants by their solicitors and hav-
ing filed and presented to the Court their petition for al-
lowance of appeal to the United States Supreme Court,
their Assignment of Errors, and Jurisdictional statement,
upon consideration thereof, it is hereby

Ordered that said appeal be allowed upon the filing of a
bond in the sum of \$500.00, with good and sufficient surety
to be approved by the Court.

Done and ordered at Gainesville, Florida, November 2,
1940.

Augustine V. Long, District Judge.

[fols. 1798-1801] Cost Bond on Appeal for \$500.00 ap-
proved and filed Nov. 2, 1940, omitted in printing.

[fols. 1802-1804] Citation in usual form showing service
on Manley P. Caldwell, filed Nov. 2, 1940, omitted in print-
ing.

[fol. 1805] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRACIPE TO CLERK—Filed November 2, 1940

To the Clerk of the Above Entitled Court:

In making up the transcript of record in this case to
be filed in the Supreme Court of the United States, you

will please include in said transcript of record the following papers, to-wit:

1. Bill of Complaint and Exhibits thereto filed herein on Feb. 7, 1938.
2. Order Convening Three Judge Court filed Feb. 7, 1938.
3. Motion to Dismiss Bill of Complaint filed March 3, 1938.
4. Order Denying Motion to Dismiss Bill and granting Interlocutory Injunction entered herein April 5, 1938.
- [fol. 1806] 5. Memo opinion of 3-Judge Court filed April 4, 1938.
6. Order substituting George Couper Gibbs, Attorney General, for Cary D. Landis, etc., deceased, filed May 30, 1939.
7. Supplemental Bill of Complaint filed herein on May 31, 1939.
8. Motion to Dismiss Bill and Supplemental Bill of Complaint filed June 6, 1939.
9. Answer to Bill of Complaint and Supplemental Bill of Complaint filed June 19, 1939.
10. Order fixing date of hearing filed October 9, 1939.
11. Further Supplemental Bill of Complaint with Exhibits attached filed October 19, 1939.
12. Defendants' objection to filing of plaintiffs further supplemental bill of complaint, filed October 19, 1939.
13. Plaintiffs' Motion to Dismiss Counter Claim filed Dec. 7, 1939.
14. Defendants' Motion to Dismiss Further Supplemental Bill of Complaint filed October 19, 1939.
15. Order filed October 31, 1939.
16. Defendants' Answer to Further Supplemental Bill of Complaint filed November 17, 1939.
17. Notice of Trial and Final Hearing filed March 15, 1940.

18. Depositions of Witnesses for Complainants taken in New York, N. Y. February 6-9, 1940, together with indices.

19. Transcript of proceedings at trial taken on April 15-16, 1940. Pages 1 to 732 inclusive, together with indices.

20. Stipulations as to Exhibits filed 2nd day of November, 1940.

21. Findings of Fact and Conclusions of Law filed August 5, 1940.

22. Opinion of Court filed August 5, 1940.

23. Final Decree filed August 5, 1940.

24. Petition for Appeal filed herein on the 2nd day of November, 1940.

25. Assignment of Errors filed herein on the 2nd day of November, 1940.

[fol. 1807] 26. Jurisdictional Statement of Appellants filed herein on the 2nd day of November, 1940.

27. Order Allowing Appeal filed herein on the 2nd day of November, 1940.

28. Bond for Costs filed herein on the 2nd day of November, 1940.

29. Citation to Appellees and Proof of Service thereon filed the 2nd day of November, 1940.

30. Statement directing attention of Appellees to the provisions of paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States filed the 2nd day of November, 1940.

31. Proof of Service upon Appellees of the following:

- (1) Copy of Petition for Appeal,
- (2) Copy of Order Allowing Appeal,
- (3) Copy of Appeal Bond and Approval Thereof by Judge,
- (4) Copy of Assignment of Errors,
- (5) Copy of Jurisdictional Statement,
- (6) Copy of Statement directing attention of Appellees to the provisions of paragraph 3 of Rule 12 of the Rules of

the Supreme Court of the United States filed the 2nd day of November, 1940.

(7) Copy of directions for making up transcript of record, filed the 2nd day of November, 1940.

32. These Directions for Making up the Transcript of Record filed November 2nd, 1940.

George Couper Gibbs, Attorney General. Tyrus A. Norwood, Assistant Attorney General. Lucien H. Boggs. Andrew W. Bennett.

[fol. 1808] IN UNITED STATES DISTRICT COURT

[Title omitted]

Equity No. 12

PETITION FOR APPEAL—Filed November 2, 1940

The petitioners, Gene Buck, individually and as President of the American Society of Composers, Authors and Publishers, Carl Fischer, Inc., G. Schirmer, Inc., Irving Berlin, Inc., Deems Taylor, Oley Speaks, William J. Hill, Anne Paul Nevin, Ella Herbert Bartlett and Jane Sousa, the complainants in the above entitled action, considering themselves aggrieved from so much of the decree made and entered herein on the 5th day of August, 1940 as vacates and dissolves the temporary injunction order of this Court, made and entered on the 30th day of October, 1939, awarded against enforcement of Chapter 19653 of the Florida Laws of 1939 (hereinafter referred to as the "1939 Act") insofar as the same related to Sections 1, 2, 3, 4B, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, of said 1939 Act, and denies complainants' application to make said temporary injunction perpetual as to such sections, which decree was made and entered by three Judges in accordance with the provisions of Section 266 of the Judicial Code (U. S. C. Tit. 28, Sec. 380), do hereby appeal from said parts of said decree of this Court to the Supreme Court of the United States and pray that this appeal may be allowed [fol. 1809] and that a transcript of the record of proceedings and papers upon which said decree and order were

made, duly authenticated, may be sent to the Supreme Court of the United States, and the bond fixed at the sum of \$500.

Dated, West Palm Beach, Florida, November 2nd, 1940.
Frank J. Wideman, Louis D. Frohlich, Herman Finkelstein, Manley P. Caldwell, Counsel for Petitioners, 822 Connecticut Avenue, Washington, D. C.

[fol. 1810] IN UNITED STATES DISTRICT COURT

[Title omitted]

Equity No. 12

ASSIGNMENT OF ERRORS—Filed November 2, 1940

Come now the complainants in the above entitled cause and file the following Assignment of Errors upon which they will rely in the prosecution of the appeal from so much of the decree made and entered herein on August 5, 1940 as vacates and dissolves the temporary injunction order of this Court, made and entered on October 30, 1939, awarded against enforcement of Chapter 19653 of the Florida Laws of 1939 (hereinafter referred to as the "1939 Act") insofar as the same related to Sections 1, 2, 3, 4B, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of said 1939 Act, and denies complainants' application to make said temporary injunction perpetual as to such sections, which decree was made and entered by three Judges in accordance with the provisions of Section 266 of the Judicial Code (U. S. C. Tit. 28, Sec. 380), and say that the Court erred in the following respects, to wit:

1. The Court erred in vacating and dissolving so much of the temporary injunction order entered on October 30, 1939 as related to Sections 1, 2, 3, 4B, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the 1939 Act.

[fol. 1811] 2. The Court erred in refusing to make the temporary injunction entered herein on October 30, 1939, perpetual.

3. The Court erred in finding that the requirements of Section 2 of the 1939 Act with reference to the disclosure of information concerning the identification and owner-

ship of copyrighted musical compositions to be licensed for public performance for profit in the State of Florida, are not unreasonable or difficult of compliance.

4. The Court erred in holding that Sections 1, 2, 3, 4B, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the 1939 Act have a valid purpose to compel disclosure to protect music users against imposition in the matter of copyrighted music and that such sections effected that purpose in a reasonable way.

5. The Court erred in holding that the purpose of the 1939 Act could be effectuated by excising Sections 4A and 4C thereof and that such sections were separable from the balance of the 1939 Act.

6. The Court erred in failing to hold that the entire 1939 Act was unconstitutional.

7. The Court erred in refusing to hold that Sections 1, 2, 3, 4B, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, as well as Sections 4A and 4C, of the 1939 Act, and each of them, constitute an invasion of complainants' constitutional rights in the following respects:

(a) They interfere with and destroy the pattern of the Copyright Law by which Congress has endeavored to carry out the purpose of Article 1, Section 8, Clause 8 of the Constitution of the United States, to insure certainty and uniformity in the field of copyright; and they unreasonably interfere with the exercise by complainants of rights granted to them under the Copyright Law, and discriminate against complainants in the exercise of such rights.

(b) They deny to complainants equal protection of the laws and deprive them of their property without due process of law.

(c) They impair the obligations of contracts entered into between the Society and similar societies operating in foreign countries.

(d) They interfere with complainants' liberty of contract in the State of Florida.

(e) They interfere with treaties between the United States and foreign countries respecting copyrights and

proclamations of the President of the United States recognizing the existence of certain reciprocal conditions between the United States and foreign countries in respect of copyrights.

8. The Court erred in refusing to hold that Sections 1, 2, 3, 4B, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, as well as Sections 4A and 4C, of the 1939 Act, do not constitute a reasonable exercise of the police power of the State of Florida; that the requirements of compiling certain data and obtaining and exhibiting to prospective licensees certified copies of such data, are not reasonably necessary to meet any alleged evil; that enactment thereof was not necessary to protect, and that it does not serve, the public interest of the State of Florida; that the object, purpose and effect of the 1939 Act, including Sections 1, 2, 3, 4B, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, is to take the copyrighted musical compositions of complainants and others similarly situated for a private purpose, to wit: to [fol. 1813] benefit the 479 users within the State of Florida; that the 1939 Act, including Sections 1, 2, 3, 4B, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, as well as Sections 4A and 4C, discriminates against and in fact confiscates the musical compositions of complainants and others similarly situated; that it is contrary to and hinders carrying out the purpose of Article 1, Section 8 of the Constitution of the United States and will deter composers, authors and publishers from securing copyright registration in their works.

9. The Court erred in refusing to hold that the 1939 Act, including Sections 1, 2, 3, 4B, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, as well as Sections 4A and 4C, denies due process of law to complainants in that it is so vague, uncertain and indefinite that it fails to apprise them of what acts they must do to comply with the law and what acts they may omit or commit which would constitute a crime under the 1939 Act.

10. The Court erred in refusing to hold that the 1939 Act, including Sections 1, 2, 3, 4B, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, as well as Sections 4A and 4C, violates Article 1, Sections 8, 9 and 10, Article 3, Section 2, Article 4, Section 2, and Article 6, Section 2, of the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States, and Section 1 of the Declaration of Rights of the Florida Constitution.

11. The Court erred in refusing to hold that the complainants are entitled to an injunction permanently enjoining the defendants, and each of them, individually and in their several capacities as officials of the State of Florida, [fol. 1814] charged by the 1939 Act with the enforcement of the provisions thereof, from bringing, directly or indirectly, any proceeding at law or in equity for the purpose of enforcing the provisions of Sections 1, 2, 3, 4B, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the 1939 Act against complainants and others similarly situated their representatives, employees, agents or any of them, and from prosecuting criminally the complainants, their representatives or agents, or any of them, or others similarly situated, and generally from doing any act or thing to carry out or enforce any of the provisions of Sections 1, 2, 3, 4B, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the 1939 Act.

12. The Court erred in refusing to hold that Sections 1, 2, 3, 4B, 4D, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the 1939 Act, as well as Sections 4A and 4C thereof, constitute an attempt to restrict and to regulate the rights of the complainants to the full enjoyment of the exclusive rights granted them by the Copyright Laws of the United States.

Wherefore, complainants pray that said decree be modified by ordering, adjudging and decreeing as follows:

(a) The temporary injunction order awarded herein on April 5, 1938, against enforcement of the 1937 Act, be and the same hereby is made permanent and perpetual.

(b) The temporary injunction order awarded against the enforcement of the 1939 Act, be and the same is hereby made permanent and perpetual.

(c) That defendants George Couper Gibbs, individually and as Attorney General of the State of Florida; R. A. Gray, individually and as Secretary of the State of Florida; J. M. Lee, individually and as Comptroller of the State of [fol. 1815] Florida; E. Dixie Beggs, Jr., individually and as State Attorney for the First Judicial Circuit of Florida; O. C. Parker, Jr., individually and as State Attorney for the Second Judicial Circuit of Florida; A. K. Black, individually and as State Attorney for the Third Judicial

Circuit of Florida; William A. Hallows, individually and as State Attorney for the Fourth Judicial Circuit of Florida; J. W. Hunter, individually and as State Attorney for the Fifth Judicial Circuit of Florida; Chester B. McMullen, individually and as State Attorney for the Sixth Judicial Circuit of Florida; Murray Sams, individually and as State Attorney for the Seventh Judicial Circuit of Florida; T. E. Duncan, individually and as State Attorney for the Eighth Judicial Circuit of Florida; Murray W. Overstreet, individually and as State Attorney for the Ninth Judicial Circuit of Florida; L. Grady Burton, individually and as State Attorney for the Tenth Judicial Circuit of Florida; G. A. Wooley, individually and as State Attorney for the Eleventh Judicial Circuit of Florida; Clyde H. Wilson, individually and as State Attorney for the Twelfth Judicial Circuit of Florida; J. Rex Farrior, individually and as State Attorney for the Thirteenth Judicial Circuit of Florida; L. D. McRae, individually and as State Attorney for the Fourteenth Judicial Circuit of Florida; Phil O'Connell, individually and as State Attorney for the Fifteenth Judicial Circuit of Florida, and the respective agents, servants and employees of each of them, and all other persons acting under or through the authority of each of them or by virtue of the authority of the office of each of them, be and they are, each of them, severally, enjoined and restrained permanently from bringing directly or indirectly, or from permitting to be brought directly or indirectly, any proceeding at law or in equity, for the purpose of enforcing or executing the Statutes of Florida, known as Chapter 17807, Laws of Florida, 1937, enacted June 9, 1937, and Chapter 19653, Laws of Florida, 1939, [fol. 1816] enacted June 12, 1939, against the complainants and others similarly situated, their representatives, employees, agents or any of them, and from threatening to enforce against any citizens or residents of the State of Florida the penalties of the 1937 State Statute or those of the 1939 Act, and from prosecuting criminally the complainants, their representatives, or agents, or any of them, or others similarly situated, under the 1937 State Statute or the 1939 Act, for doing any legal act to enforce their respective rights under the Copyright Act in the Federal Courts of the State of Florida, or elsewhere, and generally

from doing any act or thing to carry out or enforce any of the provisions of the 1937 State Statute or the 1939 Act.

(d) Costs to be taxed against defendants.

Dated, West Palm Beach, Florida, November 2nd, 1940.

Frank J. Wideman, Louis D. Frohlich, Herman Finkelstein, Manley P. Caldwell, Counsel for Complainants.

[fol. 1817] IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF FLORIDA, GAINESVILLE DIVISION

Equity No. 12

GENE BUCK, individually and as President of the American Society of Composers, Authors and Publishers, etc., et al.,
Complainants,

against

GEORGE COUPER GIBBS, individually and as Attorney General of the State of Florida, et al., Defendants.

ORDER ALLOWING APPEAL—Filed November 2, 1940.

This day came the complainants by their counsel and having filed and presented to the Court their Petition for the allowance of an appeal to the Supreme Court of the United States, together with their Assignment of Errors and Statement as to Jurisdiction, pursuant to Rule 12 of said Supreme Court, and it appearing that an appeal to the Supreme Court of the United States is allowable under the United States Code, Title 28, Section 380, it is hereby

Ordered that the appeal prayed for be and hereby is allowed upon the filing of a bond in the sum of \$500 with good and sufficient surety to be approved by the Court.

Dated at Gainesville, Florida, this 2nd day of November, 1940.

Augustine V. Long, United States District Judge.

1120

[fol. 1818-1821] Cost Bond on Appeal for \$500.00 approved and filed November 2, 1940. Omitted in printing.

[fol. 1822-1847] Citation in usual form, filed November 2, 1940. Omitted in printing.

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MEMORANDA

- Aug. 8 Motion for leave to amend statement as to jurisdiction and assignment of errors.
- " 8 Order allowing amendments to statement as to jurisdiction and " " " (Signed by Judge Strum on Aug. 4, 1938 at Jacksonville.)
- " 10 Transcript of record on appeal certified and forwarded to Supreme Court of U. S.

Sept. 13 Proof of Service
1939

- May 19 Mandate received and filed in Supreme Court affirming decree of Dist. Ct. with costs
- 19 Mandate from Supreme Court affirming decree of Dist. Ct.
- 30 Certified copy Supreme Court order substituting Gibbs for Landis

31 Supplemental bill

June 1 Notice of filing supplemental bill

- 19 Motion to dismiss bill and supplemental bill
- 19 Answer to bill and supplemental bill

July 6 Motion and affidavits re further supplemental bill, etc.

- 6 Further supplemental bill tendered for filing
- 6 Motion to dismiss counterclaim

20 Stipulation re appeal bond, Petition re appeal bond, Order re appeal bond

Aug. 23 Substitution of solicitors for Complainants

Oct. 9 Order for hearing

16 Notice of hearing, Affidavit of MPC re proof of service

19 Motion and affidavit for leave to file further suppl. bill, further suppl. bill.

1848a

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[fol. 1849] (ASCAP) DOCKET SHEET No. 2.

1939 cont.

- Oct. 19 Defendants objections to filing of plaintiff's proposed further sup. Bill
- " " Offer of defendants to limit issues in case
- " " Affidavit of W. Walter Tison in opposition to injunction under further S. Bill
- " " Defendants objections to and motion to strike affidavits of Gene Buck
- " " Defendants motion to dismiss further supplemental bill
- " " Defendants motion to strike portions of further supplemental bill
- " 23 Notice of oral testimony
- " 31 Order
- Nov. 2 Supplemental findings of fact and conclusions of law
- " 8 Injunction bond filed in sum of \$5,000.00 (Md. Cas. Co. as surety)
- " 13 Notice of injunction order and filing of bond
- " 17 Three copies of defendants' answer to further supplemental bill of complaint
- Dec. 9 Motion to dismiss counterclaim
- " 20 Transcript of hearing held on October 19, 1939

1940

- Jan. 4 Notice of taking depositions and proof of service
- " 8 Stipulation postponing time for taking depositions
- Mar. 2 Deposition of witnesses for complainants
- " 12 Stipulation (re filing depositions)
- " 15 Notice of trial and final hearing
- April 7 Deposition of Edwin M. Spence
- " 10 Praecipes for subpoenas Thomas Belveso, Gerald Maltsby and James W. Baldwin
- " 15 Three Judge Court convened at Gainesville, Florida for purpose of taking testimony and for final hearing
- " 16 Cause proceeded further with taking of testimony and with argument of counsel
- " 16 Court allowed respective parties thirty days within which to file briefs

1940 cont.

- May 29 Transcript of testimony at trial and briefs filed
with Judge Long
Aug. 5 Findings of Fact and Conclusions of Law
" " Opinion
" " Decree
-

[fol. 1850] IN UNITED STATES DISTRICT COURT

[Title omitted]

Equity No. 12

PRAECIPE TO CLERK—Filed November 2, 1940.

To the Clerk of the above entitled Court:

In making up the transcript of record in this case to be filed in the Supreme Court of the United States, you will please include in said transcript of record the following papers, to wit:

1. Original Bill of Complaint filed herein on February 7, 1938, and exhibits thereto annexed.
2. Supplemental Bill of Complaint filed herein on May 31, 1939, and exhibits thereto annexed.
3. Defendants' Answer to Bill of Complaint and Supplemental Bill of Complaint, filed June 21, 1939.
4. Further Supplemental Bill of Complaint filed October 19, 1939, and exhibits thereto annexed.
5. Defendants' Answer to Further Supplemental Bill of Complaint, filed November 15, 1939.
6. Motion to Dismiss Counterclaims, filed December 7, 1939.
7. Chapter 17807, Laws of Florida, 1937 (the 1937 Act), annexed to original Bill of Complaint as Exhibit "E".
- [fol. 1851] 8. Chapter 19653, Laws of Florida, 1939 (the 1939 Act), annexed to Further Supplemental Bill of Complaint, as Exhibit "M".
9. Transcript of hearing before Hon. Joseph C. Hutchinson, Circuit Judge, Hon. Louie W. Strum, District Judge, and Hon. A. V. Long, District Judge, on October 19, 1939 at Jacksonville, Florida, (pages 1-85 incl.).
10. Transcript of Evidence upon the trial, held April 15, 16 and 17, 1940, pages 1-732, inclusive, together with Com-

plainants' Exhibits 1-19, inclusive, and Defendants' Exhibits A-1-A-10, inclusive, thereto annexed, as stipulated in annexed stipulation.

11. Depositions of Irving Caesar, Deems Taylor, Edgar Leslie, Fred E. Ahlert, Will Von Tilzer, Walter S. Fischer, Oscar Hammerstein, G. Schirmer, Saul Bornstein, George W. Meyer, Herman Greenberg, and Irving Berlin, pages 1-489, inclusive, and Complainants' Exhibits 1-78, inclusive, and Defendants' Exhibits A-G, inclusive, thereto annexed, as stipulated in annexed stipulation.

12. Motion to convene three Judges in accordance with Section 380, Title 28, United States Code.

13. Order convening three-Judge Court, filed herein on February 7, 1938.

14. Order of Court granting temporary injunction restraining enforcement of 1937 Act filed on April 4, 1938.

15. Order of Court granting temporary injunction restraining enforcement of 1939 Act filed October 31, 1939, and granting leave to file Further Supplemental Bill of Complaint and adding and substituting certain parties.

16. Opinion of Court on permanent injunction filed August 5, 1940.

[fol. 1852-1856] 17. Findings of Fact and Conclusions of Law filed August 5, 1940.

18. Decree appealed from, filed August 5, 1940.

19. Plaintiffs' Petition for Appeal filed herein on November 2nd, 1940.

20. Plaintiffs' Assignment of Errors filed herein on November 2nd, 1940.

21. Order Allowing Appeal filed herein on November 2nd, 1940.

22. Plaintiffs' Bond for Costs filed herein on November 2nd, 1940.

23. Citation to Defendants-Appellees and proof of service thereof, filed herein on November 2nd, 1940.

24. Jurisdictional Statement of Plaintiffs-Appellants, filed herein on November 2nd, 1940.

25. Statement directing attention of Defendants-Appellees to provisions of Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States, filed herein on November 2nd, 1940.

26. Proof of Service upon Defendants-Appellees of the following:

- (a) Copy of Petition for Appeal;
- (b) Copy of Order Allowing Appeal;
- (c) Copy of Assignment of Errors;
- (d) Copy of Jurisdictional Statement;
- (e) Statement directing attention of Defendants-Appellees to provisions of Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States, filed herein on November 2nd, 1940.

27. Docket Entries.

28. These directions for making up the transcript of record, showing service on Defendants-Appellees.

29. Affidavit of service filed November 2, 1940.

Frank J. Wideman, Louis D. Frohlich, Herman Finkelstein, Manley P. Caldwell, Counsel for Complainants.

[fol. 1857] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPELLEES' PRAECIPE TO CLERK—Filed November 13, 1940

To the Clerk of the Above Styled Court:

In making up the transcript of the record in this case to be filed in the United States Supreme Court, you will please include in said transcript of record the following papers, in addition to those specified in Appellant's Praecipe to Clerk, to-wit:

- 1. Findings of Fact and Conclusions of Law, filed May 17, 1938, relating to Interlocutory Injunction Order, of April 6, 1938.
- 2. Transcript of the hearing held in Jacksonville, Florida, on October 19, 1939, filed December 20, 1939.
- 3. Supplemental Findings of Fact and Conclusions of Law, filed November 2, 1939, pertaining to Interlocutory Injunction Order, filed October 31, 1939.

4. This Appellee's Praeceptum to Clerk, with proof of service attached.

Frank J. Wideman, Louis D. Frohlich, Herman Finkelstein, Manley P. Caldwell, Counsel for Complainants.

[fol. 1858] STATE OF FLORIDA,
County of Palm Beach, ss:

This day personally appeared before me, a Notary Public duly authorized to administer oaths, Manley P. Caldwell, who being first duly sworn, deposes and says that he is one of the counsel for the complainants in the above styled cause, and that he did, on the 9th day of November, 1940, serve true copies of the above and foregoing appellees' Praeceptum to Clerk by depositing the same in the United States mail, in envelopes securely sealed and with sufficient postage thereunto attached, addressed to Tyrus A. Norwood, Esq., Assistant Attorney General, Tallahassee, Florida; Lucien H. Boggs, Esq., Bisbee Building, Jacksonville, Florida, and Andrew W. Bennett, Esq., Edmunds Building, Washington, D. C., respectively counsel for the defendants.

Manley P. Caldwell.

Subscribed and sworn to before me this 9th day of November, 1940. Ruth E. Akerley, Notary Public, State of Florida. My commission expires June 30, 1943.

Receipt of copies of the above and foregoing Praeceptum is hereby acknowledged this 11 day of November, 1940.

Geo. Couper Gibbs, Attorney General of the State of Fla.; Tyrus A. Norwood, Assistant Attorney General; Lucien H. Boggs, Andrew W. Bennett, Counsel for the Defendants.

[fol. 1859] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO APPELLANTS' PRAECIPE TO CLERK—Filed
November 13, 1940

To the Clerk of the Above Styled Court:

In making up the transcript of the record in this case, to be filed in the United States Supreme Court on the cross appeal of the complainants herein, you will please include in said transcript of record the following papers in addition to those specified in the Praecipe to Clerk filed by these complainants on November 2nd, 1940, and said Praecipe is hereby amended by the addition of said papers thereto, to-wit:

1. Findings of Fact and Conclusions of Law, filed May 17, 1938, relating to Interlocutory Injunction Order, of April 5, 1938.
2. Supplemental Findings of Fact and Conclusions of Law, filed November 2, 1939, pertaining to Interlocutory Injunction Order, filed October 31, 1939.
3. This Appellants' Amendment to Praecipe to Clerk, with proof of service attached.

Frank J. Wideman, Louis D. Frohlich, Herman Finkelstein, Manley P. Caldwell, Counsel for Complainants.

[fol. 1860] STATE OF FLORIDA,
County of Palm Beach, ss:

This day personally appeared before me, a Notary Public duly authorized to administer oaths, MANLEY P. CALDWELL, who being first duly sworn, deposes and says that he is one of the counsel for the complainants in the above styled cause, and that he did, on the 9th day of November, 1940, serve true copies of the above and foregoing Amendment to Appellants' Praecipe to Clerk, by depositing the same in the United States mail, in envelopes securely sealed, and with sufficient postage thereunto attached, addressed to Tyrus A. Norwood, Esq., Assistant Attorney General, Tallahassee, Florida, Lucien H. Boggs, Esq., Bisbee Building, Jacksonville, Florida, and Andrew W. Bennett, Esq.,

Edmunds Building, Washington, D. C., respectively counsel for the defendants.

Manley P. Caldwell.

Subscribed and sworn to before me this 9th day of November, 1940. Ruth E. Akerley, Notary Public, State of Florida. My commission expires: June 30, 1943.

Receipt of copies of the above and foregoing Amendment to Appellants' Praecept to Clerk is hereby acknowledged this 11 day of November, 1940.

Geo. Couper Gibbs, Attorney General of the State of Fla. Tyrus A. Norwood, Assistant Attorney General. Lucien H. Boggs, Andrew W. Bennett, Counsel for the Defendants.

[fol. 1861] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO APPELLEES' PRAECIPE TO CLERK—Filed
November 13, 1940

To the Clerk of the Above Styled Court:

In making up the transcript of the record in this case, to be filed in the United States Supreme Court, you will please include in said transcript of record the following papers, in addition to those specified in appellants' praecipe to Clerk, and in addition to those specified in the appellees' praecipe to the Clerk, to-wit:

1. Motion and affidavits for leave to file further supplemental bill of complaint, bring in new defendants, substitute certain defendants and for further temporary injunction, filed October 19, 1939.

2. This amendment to appellee's praecipe to Clerk, with proof of service attached.

Frank J. Wideman, Louis D. Frohlich, Herman Finkelstein, Manley P. Caldwell, Counsel for Complainants-Appellees.

[fol. 1862] STATE OF FLORIDA,
County of Palm Beach, ss:

This day personally appeared before me, a Notary Public duly authorized to administer oaths, MANLEY P. CALDWELL, who being first duly sworn, deposes and says that he is one of the counsel for the complainants in the above styled cause, and that he did, on the 12th day of November, 1940, serve true copies of the above and foregoing Amendment to Appellees' Praecipe to Clerk, by depositing the same in the United States mail, in envelopes securely sealed, and with sufficient postage thereunto attached, addressed to Tyrus A. Norwood, Esq., Assistant Attorney General, Tallahassee, Florida; Lucien H. Boggs, Esq., Bisbee Building, Jacksonville, Florida, and Andrew W. Bennett, Esq., Edmunds Building, Washington, D. C., respectively counsel for the defendants.

Manley P. Caldwell.

Subscribed and sworn to before me this 12th day of November, 1940. Ruth E. Akerley, Notary Public, State of Florida. My commission expires: June 30, 1943.

[fol. 1863] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1864] IN SUPREME COURT OF THE UNITED STATES

No. 610

STATEMENT OF POINTS UPON WHICH APPELLANTS (DEFENDANTS BELOW) WILL RELY, AND DESIGNATION OF PARTS OF RECORD DEEMED UNNECESSARY TO THE CONSIDERATION THEREOF—Filed December 6, 1940

A—Statement of Points

1. The only portions of the 1937 Act (Chapter 17807, Laws of Florida, 1937) with the enforcement of which appellants (defendants below) are charged viz. Section 1 and the sections dependent thereon, Sections 3, 4-A, 4-B, 5-A, 5-B, 7-A, 7-B, 8 and 9, are valid enactments under the police power of the State of Florida to regulate monopolies and

restraints of trade, and the Court should not have declared them void.

2. Even if one or more of the sections of the 1937 Act dependent upon Section 1 as enumerated above were properly adjudged invalid; still, Section 1 declares completely the basic legislative purpose, and with the penalty provisions of Section 8 and the civil and criminal remedial provisions of Section 9, is clearly severable from any other sections of the Act, and should have been sustained.

[fol. 1864a] 3. Sections 2-A, 2-B and 6 of the 1937 Act were clearly severable from the remaining provisions of the Act, and the Court should not have invalidated Section 1 and its dependent sections because it held Sections 2-A, 2-B and 6 unconstitutional.

4. Even if Sections 2-A, 2-B and 6 were not severable from the remaining provisions of the Act, the constitutionality of those sections is moot in this case because:

(a) They were repealed by the 1939 Act (Chapter 19653, Laws of Florida 1939), and;

(b) The defendant state officers are not charged with the duty of enforcing them.

5. Section 4-A of the 1939 Act (Chapter 19653, Laws of Florida 1939) does not interfere with the right of the individual copyright owner to license or refuse to license public performance rights in his copyrights as he may see fit. It merely regulates the terms under which combinations of two or more copyright owners may pool their copyrights for blanket licensing at a single price in the State of Florida, and so is within the police power of the State of Florida to promote competition.

6. Section 4-C of the 1939 Act is designed to promote the liberal use of music for public cultural and entertainment purposes, without the limitations imposed by the enforced payment of a percentage of the gross receipts of such entertainment industries from other sources, and so is within the police power of the State of Florida.

7. The permanent injunction granted by the District Court is in aid of monopolistic price-fixing activities practiced by the plaintiff American Society of Composers, Authors and Publishers, and should not have been granted.

[fol. 1864b] B—DESIGNATION OF PORTIONS OF RECORD UNNECESSARY TO THE CONSIDERATION OF ABOVE POINTS

These appellants, pursuant to Section 13, Paragraph 9 of the rules of said Court designate the following parts of the record as unnecessary to the consideration of this case:

1. Plaintiffs' Motion for hearing on Temporary Injunction, filed February 7, 1938.
2. Findings of Fact and Conclusions of Law of the District Court, entered May 17, 1938.
3. Plaintiffs' Motion and affidavit for leave to file Further Supplemental Bill, filed October 19, 1939.
4. Defendants' objections to filing of plaintiffs' Further Supplemental Bill, filed October 19, 1939.
5. Supplemental Findings of Fact and Conclusions of Law of the District Court, entered November 2, 1939.
6. Plaintiffs' Motion to Dismiss Counterclaim, filed December 2, 1939.
7. Transcript of proceedings at hearing before District Court October 19, 1939, filed by plaintiffs December 20, 1939.
8. Citation on defendants' Appeal issued November 2, 1940.
9. Citation on plaintiffs' Appeal issued November 2, 1940.
10. Cost bond filed by defendants November 2, 1940.
11. Cost bond filed by plaintiffs November 2, 1940.

George Couper Gibbs, Attorney General; Tyrus A. Norwood, Assistant Attorney General; Lucien H. Boggs, Andrew W. Bennett, Solicitors for Appellants.

[fol. 1864c]

AFFIDAVIT OF SERVICE

STATE OF FLORIDA,
County of Duval

Before me personally appeared Lucien H. Boggs, who being first duly sworn says that he is one of the solicitors for the appellants (defendants below) in the above entitled cause; that on November 30, 1940, he served true copies of the foregoing Statement of Points and Designation of Parts of the Record unnecessary to the Consideration of this Appeal by mailing in the United States mail chute, Bisee Building, Jacksonville, Florida, copies thereof to the

solicitors for appelless in envelopes, postage prepaid, and addressed to them at their respective offices as follows:

Manley P. Caldwell, Esquire, Harvey Building, West Palm Beach, Florida.

Louis D. Frohlich, Esquire, Attorney at Law, 1450 Broadway, New York City, N. Y.

Frank J. Wideman, Esquire, 822 Connecticut Avenue, Washington, D. C.

Lucien H. Boggs.

Sworn to and subscribed before me this November 30, 1940. Katharine E. Walker, Notary Public, State of Florida at Large. My Commission Expires: 8/5/42. (Seal.)

[fol. 1865] IN SUPREME COURT OF THE UNITED STATES

No. 610

APPELLEES' DESIGNATION OF ADDITIONAL PARTS OF THE RECORD
—Filed December 6, 1940

Appellees, pursuant to Rule 13, Paragraph 9, of the Rules of the United States Supreme Court, designate the following parts of the record to be printed in addition to those designated by appellants:

1. Findings of Fact and Conclusions of Law of the District Court, entered May 17, 1938 (Item 2 of Appellants' "Designation of Portions of Record Regarded as Unnecessary").

2. Supplemental Findings of Fact and Conclusions of Law of the District Court, entered November 2, 1939 (Item 5 of Appellants' "Designation of Portions of Record Regarded as Unnecessary").

Dated, December 4, 1940.

Thomas G. Haight, Frank J. Wideman, Louis D. Frohlich, Herman Finkelstein, Manley P. Caldwell,
Counsel for Plaintiffs-Appellees.

[fol. 1866] IN SUPREME COURT OF THE UNITED STATES

No. 611

STATEMENT OF POINTS UPON WHICH APPELLANTS (PLAIN-
TIFFS BELOW) WILL RELY AND DESIGNATION OF PARTS OF
RECORD DEEMED UNNECESSARY TO THE CONSIDERATION
THEREOF—Filed December 6, 1940

A. Statement of Points

1. Chapter 19653, Laws of Florida, 1939, hereinafter referred to as the "1939 Act," and each and every section thereof, constitutes an invasion of appellants' constitutional rights in the following respects:

(a) It interferes with and destroys the pattern of the Copyright Law by which Congress has endeavored to carry out the purpose of Article 1, Section 8, Clause 8 of the Constitution of the United States, to insure certainty and uniformity in the field of copyright, and unreasonably interferes with the exercise by appellants of rights granted to them under the Copyright Law and discriminates against appellants in the exercise of such rights.

(b) It denies to appellants equal protection of the laws and deprives them of their property without due process of law.

(c) It interferes with appellants' liberty of contract in the State of Florida.

[fol. 1867] (d) It impairs the obligations of contracts entered into between the Society and similar societies operating in foreign countries.

(e) It interferes with treaties between the United States and foreign countries respecting copyrights and proclamations of the President of the United States recognizing the existence of certain reciprocal conditions between the United States and foreign countries in respect of copyrights.

2. The 1939 Act in its entirety and each and every section thereof, does not constitute a reasonable exercise of the police power of the State of Florida; the requirements of compiling certain data and obtaining and exhibiting to prospective licensees certified copies of such data, are not reasonably necessary to meet any alleged evil; enactment of this statute was not necessary to protect, and it does not serve, the public interest of the State of Florida.

3. The object, purpose and effect of the 1939 Act in its entirety and each and every section thereof, are to take the copyrighted musical compositions of appellants and others similarly situated for a private purpose, to wit: to benefit the 479 users within the State of Florida.

4. The 1939 Act in its entirety and each and every section thereof, discriminates against, and in fact confiscates, the copyrighted musical compositions of appellants and others similarly situated; it is contrary to, and hinders carrying out the purpose of, Article 1, Section 8 of the Constitution of the United States and will deter composers, authors and publishers from securing copyright registration in their works.

[fol. 1868] 5. The 1939 Act in its entirety and each and every section thereof, denies due process of law to appellants in that it is so vague, uncertain and indefinite that it fails to apprise appellants of what acts they must do to comply with the law and what acts they may omit or commit which would constitute a crime thereunder.

6. The 1939 Act in its entirety and each and every section thereof, violates Article 1, Sections 8, 9 and 10, Article 3, Section 2, Article 4, Section 2, and Article 6, Section 2, of the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States, and Section 1 of the Declaration of Rights of the Florida Constitution.

7. The 1939 Act in its entirety and each and every section thereof, restricts appellants in the full enjoyment of the exclusive rights granted to them by the Copyright Laws of the United States.

8. The Court erred in separating Sections 4-A and 4-C of the 1939 Act from the remainder thereof and holding the balance of the Act constitutional. The entire Act is inseparable and the Act should be held invalid in its entirety.

B. DESIGNATION OF PORTIONS OF THE RECORD UNNECESSARY TO THE CONSIDERATION OF THE ABOVE POINTS

These appellants, pursuant to Rule 13, Paragraph 9 of the Supreme Court Rules, designate the following parts

of the record as unnecessary to the consideration of this cause:

1. Motion to dismiss counterclaim (designated as Item 6 in Plaintiffs-Appellants' Praecipe).

[fol. 1869] 2. Citation on Plaintiffs' Appeal, issued November 2, 1940 (designated as Item 23 in Plaintiffs-Appellants' Praecipe).

3. Plaintiffs' Bond for Costs, filed November 2, 1940 (designated as Item 22 in Plaintiffs-Appellants' Praecipe).

Dated, December 4, 1940.

Thomas G. Haight, Frank J. Wideman, Louis D. Frohlich, Herman Finkelstein, Manley P. Caldwell, Counsel for Plaintiffs-Appellants.

[fol. 1870] CITY OF WASHINGTON,
District of Columbia:

This day personally appeared before me, a notary public for the District of Columbia, Frank J. Wideman, who being duly sworn, deposes and says: that he is one of the solicitors for the appellants (plaintiffs below) in the above cause; that on Thursday, December 5, 1940, he served true copy of the statement of points upon which appellants (plaintiffs below) will rely and designation of parts of record deemed unnecessary to the consideration thereof, by depositing such true copy in the United States mail in an envelope securely sealed and with sufficient postage attached, addressed respectively to the solicitors for appellees, as follows:

Hon. George Couper Gibbs, Attorney General of Florida, Tallahassee, Florida.

Lucien H. Boggs, Esq., Bisbee Building, Jacksonville, Florida.

Frank J. Wideman.

Subscribed and sworn to before me this 5th day of December, 1940. Flora A. Myers, Notary Public, District of Columbia. My commission expires Nov. 1, 1943. (Seal.)

Endorsed on cover: File No. 44,959, 44,960, N. Florida, D. C. U. S., Term No. 610. George Couper Gibbs, Individually and as Attorney General of the State of Florida, et al., Appellants, vs. Gene Buck, Individually and as President of the American Society of Composers, Authors and Publishers, et al. Term No. 611. Gene Buck, Individually and as President of the American Society of Composers, Authors and Publishers, et al., Appellants, vs. George Couper Gibbs, Individually and as Attorney General of the State of Florida, et al. Filed December 6, 1940. Term No. 610 O. T. 1940. 611 O. T. 1940.

(2410).